108-14

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~327~~. 61

MOSES FEIBELMAN, PLAINTIFF IN ERROR,

vs.

STEPHEN B. PACKARD, MICHAEL GERNON, AND WILLIAM R. FISH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 13, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 327.

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STEPHEN B. PACKARD, MICHAEL GERNON, AND WILLIAM R. FISH.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

MOSES FEIBELMAN & ALS. *versus* S. B. PACKARD ET ALS. } No. 7397.

Petition for certiorari.—Filed April 22nd, 1875.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The petition of Stephen B. Packard, W. R. Fish, and Michael Gernon respectfully shows unto your honors that they are defendants in a certain cause pending in the fourth district court, for the parish of Orleans, referred to and described in the copy of the petition, bond, and other documents hereto annexed and made a part of this petition, to which petitioners refer, and aver that the matter therein set forth are true in manner and form as therein set forth and aver'ed, with the
2 exception that the said process in said petition aver'ed to have been issued to your petitioner S. B. Packard, U. S. marshal, was issued from the district court of the United States for the district of Louisiana, sitting in bankruptcy, in the administration of the general bankruptcy laws of the United States, instead of from the U. S. circuit court, as herein averred, which error in said petition in no manner affects the rights of your petitioners.

And your petitioners aver that they have been and are advised and informed that said action is an action arising under the Constitution and laws of the United States, and that, according to the tenor and effect, true intent and meaning of the said act of Congress referred to in said petition, they had and have the lawful right to have said cause removed for trial and further proceedings to this court.

That in order that they might have and enjoy said right, the said cause not having as yet been heard and determined in said State court, did, on or about the 7th day of April, A. D. 1875, in due form of
3 law, make and file in said State court a petition addressed to said court, of which said petition a certified copy is annexed and made a part hereof, marked Exhibit 1.

That at or about the same date they also did execute and deliver and file in said court, and present to the said judge thereof, whereof the Hon. B. Lynch is judge, their bond, with good and sufficient surety in the sum therein named, conditioned as the law directs, as more fully and at large will appear by the examination of a certified copy thereof, hereto annexed and made a part of this petition, marked Exhibit 2.

Wherefore, the said State court in no manner disapproving or rejecting said by reason of the form, conditions, or sufficiency, your petitioners became and was entitled to have said cause removed to this court for further proceedings and trial, and did so ask and demand of said State court and the judge thereof, that said cause be considered and deemed a cause in due form of law removed from the jurisdiction and control of said State court and pending in this court.

4 Yet unmindful of the right of your petitioners in this behalf and respect, the said judge of said State court did afterwards, on the 14th day of April, 1875, refuse*d* so to act and consider said cause, but, on the contrary thereof, did make or claim to make in his said court

an order in said court refusing your petitioners the right by them so demanded, all of which will at large appear by an inspection of a copy of said alleged order hereto also annexed and made a part hereof, marked Exhibit 3, and still claims and pretends to have full jurisdiction and control over said cause, and doth threaten to proceed therewith, the rights of your petitioners and said proceedings for removal of said cause to this court to the contrary notwithstanding.

Wherefore, the premises considered, your petitioners pray that your honors will allow and grant in their behalf a writ of certiorari in due form of law, under the seal of the court, directed to the said Hon. Bartholomew L. Lynch, judge of the said district court for the parish
5 of Orleans, admonishing him that this court has acquired and now holds full jurisdiction over said cause, and commanding him that he do forthwith certify to this the said circuit court of the United States for the district of Louisiana a full and complete record of all proceedings had and of record in said court, and that said cause may be proceeded with in this court as by the statute of the United States provided and required; that the court appoint some discreet person to serve said writ, the marshal of this court being a party in interest in said cause; and for such other and further relief as to the court shall seem meet and just.

(Signed) J. R. BECKWITH,
Att'y for Petitioners.

DISTRICT OF LOUISIANA:

S. B. Packard, being first duly sworn, deposeth and saith that he knows the contents of the foregoing petition; that he believes the same to be true.

6 (Signed) S. B. PACKARD.

Sworn and subscribed before me this 22nd day of April, A. D. 1875.

(Signed) F. A. WOOLFLEY,
Clerk U. S. Circuit Court, District of Louisiana.

Exhibit 1, *referred to in petition.*

STATE OF LOUISIANA:

MOSES FEIBELMAN
vs.
S. B. PACKARD & ALS. } No. 41801. 4th district court.

To the honorable the judge of said court:

The petition of S. B. Packard, W. R. Fish, and Michael Gernon, defendants in the above-entitled suit, respectfully show unto this honorable court that the said petitioner and defendant S. B. Packard, at and before the time of the insti'tion of this suit, to wit, April 24th, 1873, was and is the duly appointed and qualified United States mar-
7 shal in and for the district of Louisiana, and as such officer charged by law to obey and execute the writs and orders of or issued by both the circuit court of the United States for the 5th judicial circuit and district of Louisiana and the district court of the United States in and for said district of Louisiana; that the duty and authority to obey and execute such orders and writs directed to him is imposed and confer'ed on and vested in him by the law of the United States and not by the law of any State thereof; that the direction and manner

in which he shall discharge the duties of his said office and execute such writs is also established and ordained solely by the acts of the Congress of the United States and not by any State law; and that in any and all suits, prosecutions, or claims made or instituted against such marshal on account of any neglect, error, or supposed wrong committed by such marshal involves and is a suit arising under the Consti-
8 tution and laws of the United States within the intent and meaning of an act of Congress entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March 3d, 1875.

That the balance of your said petitioners and defendants in this cause are sureties on the official bond of the said S. B. Packard, marshal as above stated, and are only sued in the court as such sureties on said bond, made to the United States in accordance with the requirements of its laws.

That this suit is instituted by the said plaintiff herein to recover from said U. S. marshal, and from your other petitioners, sureties on his bond as aforesaid, a sum exceeding the sum of five hundred dollars, exclusive of costs, for alleged wrongs and injuries alleged to have been committed by the said Packard, U. S. marshal, in the execution of an order or writ issued by the circuit court of the United States
9 in and for the district of Louisiana, directed to him; that the manner in which he shall execute said process are regulated and defined alone by the law of the United States and not by the law of this or any other State, and the proper courts of the United States have full and competent jurisdiction to hear and determine all matters involved in this cause, and it is particularly meet and proper that the Federal court should hear and determine this cause.

That your petitioners herewith file a good and sufficient bond, with good and sufficient sureties, in the sum of dollars, conditioned as the law directs, as will to the court appear by reference to said bond on file. Whereupon your petitioners, inasmuch as this causes is still pending and has not been tried or determined, and your petitioners desire that said cause shall be transferred and removed to the circuit court of the United States for the 5th circuit and district of
10 Louisiana, at the next term thereof, to be held at New Orleans, on the 4th Monday in April, 1875, for further proceedings and trial, your petitioners pray that said bond be accepted, and that this court proceed no further in said suit in this court, but consider and deem the same removed for all further proceedings and trial to the said circuit court of the United States.

And will ever pray, &c.,

(Signed) J. B. COTTON &
J. R. BECKWITH,
Att'ys.

Exhibit 2, referred to in petition.

STATE OF LOUISIANA:

MOSES FEIBELMAN
vs.
S. B. PACKARD ET ALS. } No. 41891. 4th district court.

Know all men by these presents that we, S. B. Packard, W. R.
11 Fish, and M. Gernon, of the city of New Orleans, State of Louis-

iana, as principals, and F. A. Woolfley, of the place aforesaid, as surety, are jointly and severally indebted unto Moses Feibelman, heirs, executor, administrator, or assigns, in the full sum of two hundred and fifty dollars, for the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Signed by our hands and sealed with our seals this 7th day of April, A. D. 1875.

The condition of the above obligation is such that whereas the above-bounden S. B. Packard, W. R. Fish, and Michael Gernon, defendants in a certain suit or action depending in this the fourth district court, for the parish of Orleans, in which said suit the said above-named M. Feibelman is plaintiff, said suit being No. 41801 of the docket
12 of said fourth district; and whereas said suit is of a civil nature and arises under the Constitution and laws of the United States, and is removable by law into the circuit court of the United States for the fifth circuit and district of Louisiana; and whereas the said above-named S. B. Packard, W. R. Fish, and Michael Gernon, said defendants, have this day made and filed in said fourth district court their petition in due form of law as required by the act of Congress in such case made and provided, and are desirous to remove said cause as aforesaid:

Now, therefore, if the above-named S. B. Packard, W. R. Fish, and Michael Gernon shall enter or cause to be entered in said circuit court of the United States, at the first day of its next session thereof, to be held at New Orleans, on the 4th Monday in April, 1875, a copy of the record in said cause, and shall pay to the party or parties entitled
13 thereto all costs that may be awarded against them by the said circuit court of the United States if said court shall hold that said suit was wrongfully *as* improperly removed thereto, and also shall appear in said court and do and perform all such other acts as are or may be necessary to comply with the law of the United States relating to the removal of suits of this character, then and in that case this obligation shall be null and void, but otherwise in full force and effect.

(Signed) S. B. PACKARD.
(Signed) F. A. WOOLFLEY.
(Signed) W. R. FISH.
(Signed) MICHAEL GERNON.

The amount of the bond is filled up by order of court, nunc pro tunc, April 7th, 1875.

State of Louisiana, fourth district court, for the parish of Orleans.

I hereby certify the foregoing petition and bond to be true
14 copies of the originals on file and of record in the office of the clerk of this court.

New Orleans, clerk's office, April 21st, 1875.

[SEAL.] (Signed) J. P. CHALON, *Dy Cl'k.*

Exhibit 3, referred to in petition.

State of Louisiana, fourth district court, for the parish of Orleans.

WEDNESDAY, *the 14th day of April*, 1875.

Present, the honorable B. L. Lynch, judge.

MOSES FIEBELMAN
vs.
S. B. PACKARD ET AL. } No. 41801.

The rule taken by def'ts herein to transfer this case to the United States circuit court for the district of Louisiana came on this day for trial. Cotton and Lery, for pl'ff in rule; Jno. Ray, for d'f'ts in rule.

When, after hearing pleadings, evidence, counsel, it is ordered
15 court that the said rules be discharged.

[SEAL.] (Signed) F. F. PALMS,
Deputy Clerk.

Order: Writ of certiorari to issue.—Extract from minutes, November term, 1874.

NEW ORLEANS, *Saturday, April 24th* 1875.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, circuit judge.

EX PARTE
STEPHEN B. PACKARD. } No. 7397.

The application for a writ of certiorari in above case was taken up.

J. R. Beckwith, for applicant; Jno. Ray and Wm. Grant, for defendants.

And after hearing argument, it is ordered that writs of certiorari issue in above case as prayed for in the petitions.

Writ of certiorari.—Issued April 26th, 1875.

UNITED STATES OF AMERICA, *ss:*

Circuit court of the United States for the fifth circuit & district of Louisiana.

The President of the United States of America to the honorable B. L. Lynch, judge of the fourth district court, for the parish of Orleans, in the State of Louisiana, greeting:

Because it has been represented to us in our said court that a cause
16 has been lately instituted and pending in your said fourth district court, for the parish of Orleans, whereof you are the judge, in which said suit Moses Feibelman & als. are plaintiffs, and S. B. Packard & als. are defendants, said cause being represented to us as being No. 41801 of the docket of your said court; and whereas it has also been represented to us in our said court that the said cause has not as yet been tried and determined; and further, that heretofore, as lawfully might, the said defendant therein, and in due form of law, made the due and proper application, and in due and proper form did, in full compliance with the

provisions of the act of Congress in such case made and provided, ask and demand that the said cause be removed to our said circuit
17 court for trial and further proceedings therein;

And whereas it has further, in due form of law, been made to appear to our said circuit court that the said cause is lawfully removable to our said court, and that you, the said judge of said fourth district court, for the parish of Orleans, have neglected and refused to treat and consider the said cause as a cause removed to our said court; and we being willing that right and justice shall be done in the premises, and that the said defendant in said cause shall have the right, benefit, and privileges conferred on and granted to them in and by the act of Congress in such case made and provided, and having ordered the said cause to be entered in the docket of said court:

Now, therefore, we command you that you do forthwith certify to us, in our said court, a full record of all proceedings had and of
18 record in your said court, that said cause may be proceeded in in our said court as by the statutes of the said United States provided and required.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26th day of April, A. D. 1875.

[SEAL.] (Signed) F. B. VINOT, *Dy Clerk.*

Let John Fahy be appointed to serve this writ.
April 26th, 1875.
(Signed) W. B. WOODS, *Judge.*

Marshal's return.

Received April 26th, 1875, by the U. S. marshal, and on the same day served a copy hereof on B. L. Lynch, judge of the fourth district court, parish of Orleans, by handing it to him in person at his domicile, 119 Elysian Fields street, in this city.

New Orleans, Ap'l 26th, '75.
(Signed) JOHN FAHY.

19 TRANSCRIPT.—FILED APRIL 22ND, 1875.

State of Louisiana, fourth district court, for the parish of Orleans.

Petition.—Filed April 24th, 1873.

MOSES FEIBELMAN & ALS. *vs.* S. B. PACKARD & ALS. } No. 41801. 4th district court, for the parish of Orleans.

To the honorable the judge of the fourth district court, in and for the parish of Orleans, in the State of Louisiana:

The petition of Moses Feibelman and George Voelker, residents of the parish of Madison, in the State of Louisiana, who are partners and doing a commercial business in said parish of Madison, at the town of Delta, respectfully represents unto your honorable court that they have been engaged for the last two years as merchants in a
20 general receiving and forwarding and commercial and mercantile business in said town of Delta, keeping on hand for wholesale and retail a general assortment of liquors, provisions, and groceries of every kind, and were doing an extensive and lucrative business

in furnishing country merchants, plantations, and families with supplies, as well as a local retail business, amounting annually to seventy thousand dollars, and annually increasing.

Petitioners represent unto your honorable court that on or about the third day of March, A. D. 1873, and during their absence from Delta, S. B. Packard, United States marshal for the district of Louisiana, by his deputy, C. R. Steel, seized and took forcible possession of their entire stock of goods, wares, and merchandize as above described, also of their store-house, together with their safe, books, notes, accounts, horses, mules, buggy, drays, and eight bale' of cotton, besides much property belonging to other persons in the possession of
21 petitioners as agents, and closed their store-house, which has caused an entire suspension of petitioner's said business, all of which is yet held in possession by said marshal or his deputies, and of which petitioners have been entirely deprived up to this time.

Petitioners further represent that said seizure by said Packard, marshal, and his deputies purports to have been made under and by virtue of a writ issued by the judge of the district court of the United States for the district of Louisiana, in the suit entitled D. Valentine & Co. & als. vs. E. Dreyfus & Co., No. 1265 in the docket of said court in bankruptcy, by which writ the said marshal was directed to seize the goods and effects of E. Dreyfus & Co., a copy of which writ is hereto annexed and made part of this petition.

Petitioners represent that no demand was made by said marshal or his deputies of petitioners to point out or deliver to them any
22 goods, wares, or merchandize which belonged to said E. Dreyfus & Co., or which they may have acquired from said E. Dreyfus & Co., but that said marshal or his deputies, regardless of the rights or interest of petitioners, or of the requirements of said writs, forcible seized and took possession of your petitioners' goods, wares, and merchandise as hereinbefore set forth, and closed up their said store-house, also seizing and taking possession of the books, notes, accounts, safe, one horse, three mules, one buggy, and eight bales of cotton, and a number of other things not classed as goods, wines, or merchandize, all the property of petitioners, none of which was authorized to be seized by said writ, altogether to the value of about thirteen thousand dollars ($13,000), nor did said writ authorize said marshal or his deputies to close up their store-house.

Petitioners further aver none of said acts of said S. B. Packard, marshal, of C. R. Steel, his deputy, or any other deputy,
23 authorized by said writ, and were illegal and oppressive and greatly damaged your petitioners: and, further, petitioners aver that all the goods, wares, and merchandize, and all other things seized by said marshal or his deputies as above set forth, were the sole and bona-fide property of your petitioners, and not the property of E. Dreyfus & Co., or of either of the members of that firm, and in or to which they had no interest, and that said marshal or his deputies seized them, even if he pretended to act under said wr t, at his own risk, forcibly and wrongfully.

Petitioners further aver that by said illegal seizure of their goods, wares, and merchandize, and other property as hereinbefore described, and the closing up of their store-house, has caused great damage in the items, particulars, and amounts following, viz:

ITEM FIRST.—That in depriving petitioner of the use and pos-
24 session of their goods, wares, and merchandize, and other property as hereinbefore set forth, and closing up of their store-house,

their regular receiving and forwarding business, and the business of supplying planters for the current year, and the furnishing supplies to interior merchants and families, as well as the profits accruing from their retail business in Delta, has been entirely ruined and suspended, by which they have suffered damage in the sum of twenty thousand dollars.

ITEM SECOND.—That by the seizure of their goods, wares, and merchandize, and other property, and closing up their store-house as hereinbefore described, they have not been enabled to meet their obligation given for the purchase of goods and effects for sale in their regular course of business, and has destroyed their credit in St. Louis, New Orleans, and other wholesale markets and elsewhere where they were in the habit of purchasing stock, and thereby broke down their credit and business, and which has caused them damage in the sum of twenty thousand dollars.

ITEM THIRD.—That much of the goods, wares, and merchandize seized as aforesaid are of a perishable character and one liable to injure if not attended to daily. Such articles as potatoes, meat, apples, corn, and various others of a like nature are entirely destroyed if kept long on hand, and, if not, they are only saleable at particular seasons, and if not then disposed of, greatly depreciate in value; that petitioners have suffered, and are still suffering, great damage, in their goods, wares, and merchandize, from the causes herein stated, to the amount of at least two thousand; and, if by cause of said seizure, their entire stock of merchandize is lost or destroyed, they claim the value thereof, as hereinbefore stated.

ITEM FOURTH.—That petitioners are informed and believe, and so charge, that a considerable amount of the goods, wares, and merchandize in their store-house at the time it was taken possession of by the deputy marshal has been stolen or destroyed, to the value of at least one thousand dollars. Petitioners are not now prepared to give a list and invoice of such articles stolen or destroyed, but reserve the right to furnish such list and invoice hereafter, as they are not yet in possession of their store-house, so as to ascertain the full facts.

ITEM FIFTH.—That in order to obtain possession of their goods, &c., and store-house seized as aforesaid, petitioners has been compelled to employ counsel to appear in the United States district court for the district of Louisiana in the suit in which said writ under which said seizure was made, to obtain the possession of their said property and store-house, and for the services of which counsel petitioners have been compelled to pay one thousand dollars, which is a direct damage resulting from said illegal seizure.

ITEM SIXTH.—That in order to obtain indemnity for the damages resulting from said illegal seizure of their goods and store-house, petitioners have been compelled to employ counsel to bring and conduct this suit, which will cost them twenty-five hundred dollars, and which is a damage resulting from said illegal seizure, and which is claimed by petitioners in this case.

ITEM SEVENTH.—That petitioners have been compelled to incur heavy costs in travelling expenses, hotel bills, and other necessary expenses in obtaining possession of their said goods, &c., and store-house, and having the seizure thereof discharged, amounting to the sum of one thousand dollars, and that they will have to incur like expenses in attending to this suit, which is a damage to your petitioners in obtaining their just rights, and which is herein claimed.

ITEM EIGHTH.—That the necessary labor and expense incurred in defending said seizure or obtaining possession of their said
28 goods and store-house petitioners amounts to the sum of five hundred dollars, which is claimed as damage in this suit.

Petitioners aver that S. B. Packard is legally and personally responsible to your petitioners for each and every item of damages above itemized and set forth, and that said Packard, as United States marshal of the district of Louisiana, and Michael Gernon and W. R. Fish, his sureties on his official bond as marshal, all residents of the parish of Orleans, in said State, are legally bound, in solido, for the damages herein itemized and set forth, a copy of which official bond is hereto annexed and made a part of this petition.

Wherefore petitioners pray your honorable court to cause said S. B. Packard, Michael Gernon, and W. R. Fish to be cited to appear and answer hereto, and that on a final hearing that petitioners have and obtain judgment in solido against said parties in the several
29 sums itemized, with all costs of this suit, and for general and equitable relief, &c.

(Signed) JOHN RAY,
Do. R. G. COBB,
Do. WM. GRANT,
Att'ys.

Citation.

State of Louisiana, fourth dist. court, parish of Orleans, in the city of New Orleans.

MOSES FEIBELMAN & ALS. *vs.* S. B. PACKARD ET ALS. } No. 41801.

Mr. MICHAEL GERNON, *New Orleans:*

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the court clerk of the fourth district court, for the parish of Orleans, in ten days after the service thereof.

Witness the honorable B. L. Lynch, judge of the said court, the
30 25th day of April, in the year of our Lord 1873.

(Signed) O. F. LYND,
Deputy Clerk.

Citation.

State of Louisiana, 4th dist. court, for the parish of Orleans, in the city of New Orleans.

MOSES FEIBELMAN ET ALS. *vs.* S. B. PACKARD ET ALS. } No. 41801.

Mr. W. R. FISH, *Residing in the city of New Orleans:*

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies the citation, or deliver your answer to the same in the office of the clerk of the fourth district court, for the parish of Orleans, in ten days after the service hereof.

Witness the honorable B. L. Lynch, judge of the said court,
31 the 25th day of April, in the year of our Lord 1873.
(Signed) F. F. PALMS,
Deputy Clerk.

Citation.

State of Louisiana, 4th dist. court, for the parish of Orleans, in the city of New Orleans.

MOSES FEIBELMAN ET AL. *vs.* S. B. PACKARD & ALS. } No. 41801.

Mr. S. B. PACKARD,
United States Marshal for the District of Louisiana:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court, for the parish of Orleans, in ten days after the service hereof.

Witness the honorable B. L. Lynch, judge of the said court, the 25th day of April, in the year of our Lord 1873.
32 (Signed) O. F. LYND,
Deputy Clerk.

Sheriff's return on citation served on W. R. Fish, esq., New Orleans.

Received April 28th, 1873, and on the twenty-ninth day of the same month and year served copy of the within citation and accompanying petition on W. R. Fish, one of the defendants herein, in person. Ret. same day. She'ff's fees, $2.00.
(Signed) PH. LACOSTE,
D'y Sh'ff.

Sheriff's return on citation served on Michael Gernon, of New Orleans.

Received April 28th, 1873, and on the 29th day of the same month and year served copy of the within citation and accompanying petition on Michael Gernon, one of the defendants herein, by leaving the same at his domicil, No. 41 Robertson street, first district, in the hands
33 of his wife, a person apparently above 14 years of age, living and residing in the same domicil, the said Gernon being absent from home at the time of said service, all of which facts connected with this service I learned by interrogating the said Mrs. Gernon. Ret. same day. Sh'ff's fees, $2.00.
(Signed) PH. LACOSTE,
Dep'y Sh'ff.

Sheriff's return on citation served on S. B. Packard, United States marshal for the district of Louisiana.

Received April 28th, 1873, and on the same day, month, and year served a copy of within citation and accompanying petition on S. B. Packard, United States marshal for the district of Louisiana. Returned same day. Sh'ff's fees, $2.00.
(Signed) HENRY BENET,
Deputy Sh'ff.

Exception.

Fourth district court, for the parish of Orleans.

MOSES FEIBELMAN & ALS. vs. S. B. PACKARD ET ALS. } No. 41801.

34 [Filed May 12th, 1873.]

Now come S. B. Packard, U. S. marshal, and Michael Gernon and W. R. Fish, made defendants in the above entitled and numbered cause, and, reserving all rights to further except and to answer to the petition of plaintiff, for exception to said petition show with respect:

That said petition is so vague, indefinite, and general, and is so insufficient in its allegations, that these appearers cannot safely answer thereto, and said petition discloses no cause for action for this:

That it appears upon the face of said petition that this is a suit upon a bond in favor of the United States of America, and not in favor of petitioners; that is matter of law that petitioners can claim nothing of these appearers under said bond, except in accordance with the mode prescribed by the statutes of the United States; that the laws of
35 the United States, as well as the ordinary rules of pleading, require a specific and particular assignment of the breaches of the conditions of the bond sued on before any action will lie thereon; that the conditions of the said bond are not set forth in the petition herein, and that no assignment or breaches thereof is alleged.

Wherefore these appearers pray to be hence dismissed with costs.

(Signed) RICE & WHITAKER, *Att'ys.*

Amendatory petition.—Filed June 27th, 1873.

Fourth dist. court, for the parish of Orleans.

MOSES FEIBELMAN ET ALS. vs. S. B. PACKARD ET ALS. } No. 41801.

To the honorable B. L. Lynch, judge of the fourth district court, for the parish of Orleans:

36 The petition of Moses Feibelman and George Voelker, by way of amendment to the original petition filed in said cause, with respect alleges that the said Stephen B. Packard, on or about the day of , 187 , made and executed his certain official bond in the sum of $20,000, with Michael Gernon & William R. Fish as sureties, conditioned for the faithful performance of his duties as marshal of the United States of America in and for the district of Louisiana, as will more fully appear by reference to the copy thereof filed and made part of the original petition.

That all the acts charged and complained of in said petition by which petitioner suffered the damages therein set forth were done by said Packard in his capacity of marshal aforesaid, and are breaches
37 of said bond, and give unto your petitioner this right of action on said bond against said marshal and his sureties.

Wherefore plaintiff prays that defendants may be cited to answer this petition, and that they may have judgment against the said Stephen

B. Packard, Michael Gernon, and William R. Fish as prayed in said original petition, and costs of suit.

(Signed) JOHN RAY,
WM. GRANT, AND
R. G. COBB,
Att'ys.

Service accepted June 27th, 1873.
(Signed) RICE & WHITAKER, *Att'ys.*

Fourth district court, for the parish of Orleans, No. 41801.

Judgment by default.—Extract from the minutes of November 6th, 1873.

On motion of John Ray, R. G. Cobb, & Wm. Grant, esq., of counsel for plaintiff, and upon suggesting to the court that defendants
38 have *half* failed to answer, altho' they have accepted service and waived citation, it is ordered by the court that judgment by default be herein entered against them.

Same case.

On motion of John Ray, R. G. Cobb, and Wm. Grant, esq., of counsel for plaintiff, and on suggesting to the court that the deposition of witnesses under commissions issued herein have been returned and filed in this court—

It is ordered by the court that defendant do show cause on Monday, the 17th inst., at 11 o'clock a. m., why the testimony returned and filed herein should not be read in the trial of this cause.

Certficate.

State of Louisiana, fourth district court, for the parish of Orleans.

39 I, Edward de Blois, clerk of the fourth district court, for the parish of Orleans, do hereby certify that the above and foregoing fifteen pages do contain a full, true, correct, and complete copy of the petition, citations, exception, amendatory petition, and judgment by default filed and entered in the cause wherein Moses Feibelman & als. are plaintiffs, and S. B. Packard & als. are defendants, instituted in said fourth court, under the number 41801 of the docket hereof.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this seventeenth day of December, in the year eighteen hundred and seventy-three of our Lord, and the ninety-eighth of the Independence of the United States.

[SEAL.] (Signed) ED. DE BLOIS, *Clerk.*

40 *Answer.—Filed January 10th*, 1876.

Circuit court of the United States, district of Louisiana.

MOSES FEIBELMAN ET ALS.
vs.
S. B. PACKARD ET AL. } No. 7397. Answer.

And now come the said defendants, and for answer to said plaintiffs' petition, saving and reserving the benefit of all exception heretofore

made and filed in this cause, deny all and singular the allegations in said plaintiff's petition contained, alleged, and set forth, except in so far and to such extent as the same may be hereinafter specially admitted.

And, further answering, said defendants say that it is true that at the day and date in said petition named the said defendant, S. B. Packard, was United States marshal in and for the district of
41 Louisiana, as in said petition averered.

And said defendants further admit that it is true that on or about the 21st day of January, 1873, the commercial firm of David Valentine & Co., of the city of New York, composed of David Valentine, Fred'k A. Macy, and William H. King, in due form of law presented and filed in the district court of the United States in and for the district of Louisiana their petition in due form of law against the said E. Dreyfus & Co., *and Company*, named in said plaintiffs' petition herein, addressed to the judge of said court, and, among other things, praying that the said Dreyfus & Co., by said court, after due proceedings had, be adjudged and decreed to be bankrupts according to the provisions of the law of the United States in relation to bankruptcy then and at that time in force, which said petition contained and set forth all the
42 material facts and averments necessary to give the said court full jurisdiction of the said inquiry.

That in said proceedings aforesaid, among other things, they applied to said court, sitting in bankruptcy, for a writ of provisional seizure, in due form of law, directed to said defendant S. B. Packard, U. S. marshal as aforesaid, commanding him to take possession, provisionally, of all the effects of the said E. Dreyfus & Co., and the same safely keep until the order and determination of the court in the premises. And further that said defendant the said marshal take possession of all the merchandize by the said Dreyfus & Co. transferred to the said plaintiffs herein at Delta, in Louisiana, and the same also hold and keep subject to the order and determination of the said U. S. district court sitting in bankruptcy.

That the said U. S. district court having full and competent
43 jurisdiction in the premises, and after due consideration thereof, did then and there allow, make, and grant the said relief, orders, and writ so prayed for in said petition, and grant and did make and issue the following order in said cause, to wit:

"It is ordered that the marshal take provisional possession of all the property of said defendants, real and personal, belonging to the said firm of E. Dreyfus & Co., or the individual members thereof, and particularly the merchandize pretended to have been transferred to Moses Feibelman at Delta, Louisiana, and all of the books of account, bank-books, and papers of, or relating to the business of, said firm, E. Dreyfus & Co., and hold the same subject to the further orders of the court."

And the said court did further grant, and allow, and issue a
44 writ, in due form of law, under the seal of the said U. S. district court, addressed to the said defendant Stephen B. Packard, in his said official character as marshal as aforesaid, in which said writ the said defendant, U. S. marshal as aforesaid, was directed and commanded, as such officer of said , substantially as follows:

UNITED STATES OF AMERICA:

District court of the United States, district of Louisiana.

D. VALENTINE & Co. / *vs.* / E. DREYFUS & Co. } No. 1265.

The President of the United States to the marshal of the United States for the district of Louisiana, greeting:

You are hereby commanded, in the name of the United States
45 and of our district court, to take provisional possession of all the property, real or personal, belonging to the firm of E. Dreyfus & Co., and to Emanuel Dreyfus, Marcus Weil, Mrs. Fannie Weil, widow of Samuel Weil, the individual members of said firm, and of all the books of account, bank-books, and papers relating to the business of said firm, in whose hands soever you may find the same, within your district, and particularly the goods, wares, and merchandize pretended to have been transferred and sold by the defendants to Moses Feibelman, of Delta, and hold the same subject to the further orders of our court.

Witness the honorable E. H. Durell, judge of said court, at New Orleans, this 21st of January, 1873.

K. LOEW, *Dy Clk.*

Which said writ or order referred to in said plaintiffs' petition, and which said writ, together with all proceedings connected
46 therewith, of record in the said district court of the United States for the district of Louisiana in suit or proceeding No. 1265 the of docket thereof, entitled D. Valentine & Co. et al. vs. E. Dreyfus & Co., to which defendant refers.

And defendant further says that said writ so issued as aforesaid was delivered to said defendant S. B. Packard, marshal, to be executed by him according to the tenor, effect, and command thereof therein contained; that in obedience to the command of said process the said defendant, by his deputies, did obey and comply with the command of said writ according to the tenor thereof, and did take into his possession and custody the goods, property, and chattels described and referred to in said writ, and no other goods, property, or chattels whatsoever, in which said act said defendant had, from the nature
47 of said writ, no choice or election whatsoever.

And defendants, further answering, says that the said property so being in the possession of said marshal as aforesaid was then and there, in contemplation of law, in the custody of said court which issued said writ; that said defendant made full and due return of his acts and doings in obedience to said writ to the said court, together with a full description of the said property so taken into his possession, and that he so held the same until, by lawful order of said court sitting in bankruptcy (to wit, on or about the 20th of June, 1873), when said marshal delivered all of said property so seized under said writ into the possession of one E. E. Norton, who, before that time, been appointed by the said court with authority to take the same into
48 his possession, all of which will more fully and at large appear by the return made on said writ, and on file in said cause of D. Valentine & Co. vs. E. Dreyfus & Co., aforesaid.

And, further answering, defendant say that the said property so be-

ing seized and brought into said U. S. district court as aforesaid, and so being in the custody, possession, and control of the said court, as the property of the said E. Dreyfus & Co., bankrupts as aforesaid, the said district court then and there became and was in all things vested with the full and exclusive right to hear and determine all questions of property or right of possession of said court thereof, and of all contents or enquiries, whether the said property was subject to said writ or whether the same was subject to be taken possession of and disposed of and the proceeds thereof applied to the satisfaction of the
49 claims of the creditors of the said bankrupts.

That afterwards, and on about the 25th day of March, 1875, the said plaintiffs did, as he legally might, voluntarily appear in said cause of D. Valentine & Co. vs. E. Dreyfus & Co., in said bankrupt proceedings, and then and there, by written allegations in that behalf, make and submit to the court claim and demand for custody of the goods, chattels, and property so in the possession of the court as aforesaid, the said goods and property so then and there claimed and sued for being the same goods and chattels named and described in the said plaintiff's petition herein, and in said proceedings did set up and aver that the same were the property of him, the said Moses Feibelman; that issue was in said cause duly made, tried, and submitted to
50 the court for deliberation, and that the *payment* and decision of the said court in the premises has not as yet been made and delivered, but is still pending and undetermined.

Wherefore said defendant' say that the said plaintiff herein, having so submitted to the said district court of the United States the adjudication of his alleged right to the possession and ownership of the said property described and set forth in his said petition, is estopped and barred from any attempt to try his alleged title to said goods and property in any indirect or collateral way or proceedings, or by this action against these defendants, or from claiming, averring, or demanding any alleged damage or injury for any alleged taking or detention of any property whatsoever under or by virtue of said writ, until the said
51 district court of the United States shall have determined and adjudged the said question and issue, whether the said plaintiff herein has or had any right, title, or interest in or to said property so seized under said writ as aforesaid.

Wherefore said defendants pray judgment against the said plaintiff, with costs, and for general relief.

(Signed) J. R. BECKWITH,
Att'y for Def'd'ts.

(Signed) COTTON & LEVY,
Of Counsel.

Peremptory exception of W. R. Fish and M. Gernon.—Filed January 21st, 1878.

Circuit court of the United States, district of Louisiana.

MOSES FEIBELMAN ET AL.
vs.
S. B. PACKARD, U. S. MARSHAL, ET AL. } No. 7397.

52 And now come the said defendants W. R. Fish and Michael Gernon, by J. B. Cotton *by J. V. Cotton* and J. R. Beckwith, their attornies, and for peremptory exception herein severally say that

the said plaintiffs ought not to further have and maintain his said action against them, or either of them, *or either of them*, because they say that all and singular the matters and allegations in said plaintiffs' petition, and said amended and supplemental petition, in manner and form as therein and thereby set forth, are not sufficient in law to entitle the said plaintiff to recover against the said defendants, or either of them. Herein they pray the judgment of the court, and that the said plaintiff's action against them, and both of them, be dismissed, and for costs, &c.

(Signed) J. R. BECKWITH,
(Signed) J. B. COTTON,
Att'ys for said Def'ts.

53 *Verdict.—Extract from minutes, November term*, 1878.

NEW ORLEANS, *Thursday, February* 13, 1878.

Court met pursuant to adjournment.
Present, Hon. Wm. B. Woods, circuit judge.

MOSES FEIBELMAN ET ALS. *vs.* S. B. PACKARD ET ALS. } No. 7397.

The trial of this cause was this day resumed before the court and jury, and after hearing arguments of J. R. Beckwith, for defendants, and of John Ray, for plaintiffs, and receiving a charge from the court, the cause was submitted to the jury, Allain Eustis being appointed foreman thereof, and they retired to deliberate upon their verdict. After a short deliberation the jury returned into court and delivered the following verdict, to wit:

NEW ORLEANS, 13*th Feb'y*, 1879.

Verdict for defendants; no damages.

ALLAIN EUSTIS, *Foreman.*

Whereupon it was ordered that the verdict be recorded.

54 *Judgment.—Extract from judgment-book, November term*, 1878.

NEW ORLEANS, *Thursday, February* 13*th*, 1879.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

MOSES FEIBELMAN ET ALS. *vs.* S. B. PACKARD ET ALS. } No. 7397.

By reason of the verdict of the jury herein, and in accordance therewith, it is ordered, adjudged, and decreed that there be judgment against the said demand of the plaintiffs, Moses Feibelman and George Voelker, with costs; and that the said defendants do have and recover of and from the plaintiffs, in solido, all their costs expended, to be taxed, and that they have execution therefor.

Judgment rendered February 13th, 1879. Judgment signed February 18th, 1879.

(Signed) W. B. WOODS, *Judge.*

55 *Bill of exception.—Filed March 7th*, 1879.

MOSES FEIBELMAN ET AL.
vs.
S. B. PACKARD ET AL. } No. 7397.

Be it remembered that in the trial of the above-entitled case the court charged the jury as follows: That if the jury believed from the evidence that *that* the plaintiffs, in order assist the said firm of E. Dreyfus & Co. in defrauding their creditors, took into their possession the goods of E. Dreyfus & Co., and fraudulently, and for the purpose aforesaid, mingled them with their own so that the goods of E. Dreyfus & Co. could not be distinguished, and the said plaintiffs failed to point out to the marshal the goods which in fact belonged to E. Dreyfus & Co., but fraudulently claimed to be the owner of the entire stock, that the marshal was justified under the said writ in seizing the
56 entire stock, and the plaintiffs are not entitled to recover damages for such seizure.

To which *damage* the plaintiffs, by their counsel, excepted, on the ground that it was illegal in this, that if merchandize belonging to plaintiffs and to which defendants in the writ under which the marshal had no right to seize them, and that he did it at his peril and must respond to the plaintiffs in damages on proof thereof.

And in order that said charge of the court to the jury might appear of record, the plaintiffs, by their counsel, prayed the court to sign and seal this their bill of exception, which is done accordingly this March 7th, 1879.

(Signed) W. B. WOODS, [SEAL.]
Judge.

Bill of exception.—Filed March 7th, 1879.

In United States circuit court.

MOSES FEIBELMAN ET AL.
vs.
S. B. PACKARD ET. AL. } No. 7397.

57 Be it remembered that on the trial of the above-entitled suit the plaintiffs asked the judge to give in charge to the jury charges numbered 1, 2, 4, 5, 6, 8, & 10 hereto annexed, which was refused by the court, and at the same time plaintiffs asked the judge to give in charge to the jury charges numbered 3, 7, 9 hereto annexed, which were given with modifications, to which refusual to give charges Nos. 1, 2, 4, 5, 6, 8, & 10 and the modifications to charges Nos. 3, 7, and 9 plaintiffs excepted, and tender this their bill of exception.

March 7th, 1879.

(Signed) W. B. WOODS, [SEAL.]
Judge.

1. That neither Moses Feibleman nor the firm of Feibelman & Voelker were parties to the suit or proceeding of D. Valentine & Co. vs. E. Dreyfus & Co., as appears by the record given in evidence in this case and hereto annexed.

2. That not being parties to that suit, the warrant issued in

58 that cause, so far as it commanded the marshal to take provisional poss'ion of the property sold by E. Dreyfus & Co. to Moses Feibelman, transcended the powers conferred on the court by the 40th section of the bankrupt act, and was in violation of that provision of the Consti'tion of the United States which provides that no man shall be deprived of his property without due process of law.

3. That under the writ issued in said suit of D. Valentine & Co. vs. E. Dreyfus & Co. to the marshal to take possession provisionally of the property of E. Dreyfus & Co., the marshal could only take possession of the property of E. Dreyfus & Co., and that if under said writ the evidence shows he took possession of the property of plaintiffs, he was a trespasser, and is accountable to them in damages for the trespass.

4. That the clause in said writ which commands the marshal
59 to take into his possession provisionally, "particularly the goods, wares, and merchandize pretended to have been transferred and sold by the defendants to Moses Feibelman at Delta," gives the marshal no greater power or authority than he possessed without it, and did not authorize the marshal to take possession of the property of plaintiffs, nor protect him in doing that; the marshal in taking possession of any other property than that of E. Dreyfus & Co. under said writ did it at his peril.

5. That if the jury find from the evidence that plaintiffs were in possession of the property taken possession of by the marshal under said writ, at the time it was so taken, and that they claimed the same as owners and were exercising dominion and control over said property at the time it was so taken, that the marshal had no right or legal authority to take it out of their possession under said writ,
60 and that his act in doing so was a trespass against said persons and their property. That their title and possession could not be legally disturbed by the marshal under said writ, but only by due process of law instituted against them by some person claiming and adverse interest in it.

6. That if the jury find from the evidence that at the time the marshal take possession of the property under said writ, that plaintiffs were in actual possession of said property and were then exercising dominion and control over it as owners, that in this suit, which is for damages against the marshal for trespass in taking said property, that title in E. Dreyfus & Co. to said property cannot be legally set up by the marshall whether the plaintiffs' title is fraudulent or not, that their title to said property cannot be attacked and they be put in
61 proof of *of* said property by virtue of a seizure of the property in their possession as owners under a writ commanding the seizure of the property of E. Dreyfus & Co., that they cannot be disturbed in the possession of property held by them as owner unless by a suit against them in a regular judicial proceeding in which they can in a court defend their title.

7. That if the jury find from the evidence that all the property seized by the marshal under said writ, or any part of it, was in the possession of and under the dominion and control of the plaintiffs, as owners, at the time of the seizure, it will be the duty of the jury to find the value of such property at the time and place when and where it was so taken by the marshal, and to bring in a verdict in favor of the plaintiffs and against the defendants for such value, with five per cent.
62 per annum interest thereon from the time it was so taken.

8. That if the jury find from the evidence that the taking pos-

session of the property of plaintiff by the marshal under said writ entirely broke up the commercial business in which he or they were engaged, and that such taking possession of their property was the immediate, direct, natural, and proximate consequence of such act of the marshal, and that damage resulted to plaintiffs by such breaking up of their business in the loss of profits on the sale of merchandize, and on the operation of their business, that it is the duty of the jury to ascertain such damage from the evidence before them and to award the same in favor of plaintiffs and against the marshal over and above the value of the property taken.

63 9. That if the jury find from the evidence that the taking possession of the property of plaintiffs the marshal, under said writ, entirely destroyed their credit in St. Louis, New Orleans, and in the markets where they had credit and purchased stock for their establishment at Delta, and that such acts of the marshal was the immediate, direct, natural, and proximate cause of such destruction of credit, and that damage resulted to them from such acts of the marshal, that then it will be the duty of the jury to find from the evidence the amount of such damage and award it to the plaintiffs and against the defendants over and above the value of the property taken.

10. That if the jury find from the evidence that the marshal, in taking possession of the property under said writ, knew the same was in the possession of and under the dominion and control of plaint-

64 iffs, as owners, at the time of such taking possession, or that he was advised of the said ownership of pl'ffs after the said taking possession thereof, and the possession of the same was demanded of him by the plaintiffs, and that he failed and refused to deliver up to pl'ffs the possession of such property for the reason he held an indemnity bond from the creditors of E. Dreyfus & Co., and that he had no evidence when he took possession of such property that it was the property of E. Dreyfus & Co., that then the marshal is liable for damages under each item of damage set forth in pl'ffs' petition in this case, and that it will be the duty of the jury to ascertain from the evidence the amount of damage to plaintiffs under each of said items, and award the amount in their verdict in favor of the plaintiffs and against defendants.

65 RECORD OFFERED IN EVIDENCE BY PLAINTIFFS, AND REFERRED TO AND MADE PART OF FOREGOING NOTE OF EVIDENCE

In the district court of the United States for the district of Louisiana.

IN THE MATTER OF D. VALENTINE & CO. & al. *vs.* E. DREYFUS & CO.	In bankruptcy.	No. 1265.

Petition.—Filed January 21st, 1873.

To the honorable E. H. Durell, judge of the district court of the United States for the district of Louisiana:

The petition of David Valentine & Co., merchants, of the city of New York, a firm composed of David Valentine, Frederick A. Macey, and Wm. H. Wing, respectfully shows that the said David Valentine & Co. are creditors of E. Dreyfus & Co., merchants, domiciliated and doing

66 business in Monroe, parish of Ouachita, Louisiana, composed of the following persons: Emanuel Dreyfus, Marcus Weil, Mrs. Fannie Weil, widow of C. Weil, deceased, and of said parish of Ouachita, and of Mrs. Caroline Weil, widow of Samuel Weil, deceased, and who resides in New Orleans, who, for a period of upwards twelve months next preceeding the date of the filing of this petition, have resided and done business at Monroe, in said parish of Ouachita, and State of Louisiana, and district aforesaid; that the demand of said David Valentine & Co. is provable against the said E. Dreyfus & Co., in accordance with the provisions of the act of Congress entitled "An act to establish an uniform system of bankruptcy throughout the United States," approved March 2d, 1867; that they believe that the said E. Dreyfus & Co. owe debts to an amount exceeding the sum of three hundred dollars ($300.00); that the demand of the said David Valentine & Co. exceeds the amount of two hundred and fifty dollars ($250.00), amounting
67 to the sum of six thousand two hundred and eighty-seven dollars and fourteen cents ($6,287.14); that the nature of the demand of said David Valentine & Co. against the said E. Dreyfus & Co. is as follows: Three certain promissory notes made by the said E. Dreyfus & Co. to the order of the said David Valentine & Co.; two of them, severally, for the sum of two thousand and ninety-one dollars and sixty-seven cents ($2,091.67), dated August 29th, and payable, one in four months and the other in five months; the third for the same amount, dated August 12th, 1873, payable in five months, and an open account copy of which is hereto annexed, for twelve dollars and seventeen cents ($12.17). And your petitioners further represent that the total indebtedness of said E. Dreyfus & Co. amounts to the sum of one hundred and sixty-seven thousand six hundred and five dollars and thirty-eight cents ($167,605.38);
68 all of which has been contracted, as your petitioners believe, since and during August, 1872, as will more fully appear by a statement in the handwriting of said E. Dreyfus & Co., and made by them, which is hereto annexed; that the property of the said E. Dreyfus & Co., as they represent, does not exceed an amount of ten per cent. of this indebtedness.

And your petitioners further represent that within the six calender months next preceeding the date of the filing of this petition the said E. Dreyfus & Co. did commit an act of bankruptcy within the meaning of said act, to wit, at Delta, Louisiana; on or about the 1st day of December, 1872, they made conveyance of a large amount of merchandize, of the value of about twenty thousand dollars, to Moses Feibelman, at Delta, Louisiana, with intent to delay, defraud, and hinder their creditors; that, being insolvent and in contemplation of bankruptcy
69 and insolvency, they transferred the said merchandise to the said Feibelmann.

And your petitioners further represent that within the six calender months next preceeding the date of the filing of this petition, at the town of Monroe, in said State and district of Louisiana, the said E. Dreyfus & Co. did commit other acts of bankruptcy within the meaning of said act, to wit, in that the said E. Dreyfus & Co., being merchants and traders, they fraudulently stopped payment, and have stopped and suspended and not resumed payment, of their commercial paper within a period of fourteen days, as follows: One note held by E. H. Furher & Co., which was due Nov. 29th, 1872, for the sum of six hundred and eighty-nine dollars and thirty-seven cents ($689.37); one other note due December 4th, 1872, for the sum of one thousand and seven hundred and ninety-six dollars and sixty-three cents ($1,796.63),

held by E. A. Batchelor & Co.; one other note held by said E.
70 A. Batchelor & Co., due December 6th, 1872, for the sum of one thousand seven hundred and ninety-six dollars and sixty-three cents ($1,796.63); one other note held by said E. A. Batchelor & Co., due December 5th, 1872, for the sum of eight hundred and ten dollars and eleven cents ($810.11); one other note, hereinbefore described, made by said E. Dreyfus & Co. to the order of your petitioners, dated August 29th, 1872, payable in four months after date, for the sum of two thousand and ninety-one dollars and sixty-seven cents ($2,091.67); one other note, made the said E. Dreyfus & Co., for the sum of five thousand and fifty-three dollars, due December 23, 1872; one other note, made by the said E. Dreyfus & Co. and held by John Hill & Co., for the sum of six hundred and twenty-four $\frac{18}{100}$ dollars, due December 6, 1872; each of said notes being the commercial paper of the said E. Dreyfus & Co., and in reference to each of which they have fraudulently stopped payment, and have stopped and suspended and
71 not resumed payment for a period of fourteen days.

And your petitioners further represent that, within the six calender months next preceeding the date of the filing of this pe'tion, the said E. Dreyfus & Co. did commit other acts of bankruptcy within the meaning of said act, to wit, in this, that they placed their property, goods, rights, and credits beyond the reach of their creditors and with intent to defraud them; that they have shipped from their place of business large quantities of their most valuable goods and merchandise and disposed of them and secreted them so that their creditors cannot find them. That the said E. Dreyfus & Co. have purchased large amounts of goods ostensibly to be sold in the market in the city of Monroe aforesaid at and from their place business in said city in the due course of trade and business; that instead of so doing
72 they have shipped some of the goods and *and* merchandize to other markets, and others were stopped in transits to Monroe from the place where they were purchased, and either sold at a sacrifice, secreted, or disposed of in some manner so that they are safe from pursuit of their creditors.

And your petitioners further represent that the said E. Dreyfus & Co. have disposed of large quantities of their goods and merchandise for cash and evidences of debt at prices far less than cost.

That they have given away a considerable amount in value recently; that they have recently sent a considerable quantity of goods and merchandise to Mrs. Caroline Weil, a member of the firm, who resides in New Orleans, thus placing their assets beyond the reach of their creditors, with intent to hinder, delay, and defraud their creditors.

That your petitioners are informed and believe, and therefore
73 allege, that the said E. Dreyfus & Co. are about to leave the district of Louisiana, and to remove and conceal their goods, chattels, and evidences of property, and fraudulently convey and dispose of the same.

Wherefore your petitioners pray that the said E. Dreyfus & Co., namely, Emanuel Dreyfus, Marcus Weil, widow C. Weil, deceased, and Mrs. Caroline Weil, widow of Samuel Weil, and the said E. Dreyfus & Co. may be declared bankrupts, and that a warrant may be issued to take possession of their estate, as well *as* the estate of the partnership as the estate of the said E. Dreyfus & Co. individually; that the same may be distributed according to law; and that such further proceedings may be had thereon as the law in such case prescribes. And your petitioners further pray that a warrant may issue to the

marshal of the district, commanding him to arrest the said
74 Emanuel Dreyfus and Marcus Weil, and safely keep them until they give bail to the satisfaction of this honorable court; and your petitioners further pray that this court will issue an order directed to the marshal of this district to take possession of, provissionally, *of* all the property and effects of the said E. Dreyfus & Co., and safely keep the same until the further order of the court, and to take possession of the merchandize pretended to be transferred to the said Feibelmann at Delta, Louisiana.

And, further, that the marshal be directed to take into his possession, and hold, subject to the order of the court, all the books of account, bank-books, and papers of or relating to the business of said firm of E. Dreyfus & Co.

(Signed) E. C. BILLINGS,
(Signed) GIBSON & AUSTIN,
(Signed) HARRIS & HARRIS,
Solicitors for Petitioning Creditors.
(Signed) DAVID VALENTINE & CO.,
Petitioners.

75 UNITED STATES OF AMERICA,
District of Louisiana, ss:

Frederick A. Macy, being duly sworn, deposes and says that he is a member of the firm of David Valentine & Co., petitioning creditors herein; that the statements contained in the foregoing petition, subscribed by him as member of such firm, are true, so far as the same are stated of his own knowledge, and that those matters which are therein stated on information and belief are true according to the best of his information, knowledge, and belief.

(Signed) FREDERICK A. MACEY.

Subscribed and sworn to before me this 21st day of January, 1873.
(Signed) C. S. KELLOGG,
Register in Bankruptcy.

In the district court of the United States in the district of Louisiana.

In the matter of E. Dreyfus & Co., in bankruptcy, against
76 whom a petition for adjudication of in bankruptcy was filed on the 21st day of January, 1873, at the city of New Orleans, in said district, on the 21st day of January, 1873, before C. S. Kellogg, one of the registers of said court in bankruptcy.

Frederick A. Macy, of the district of New York, city of New York, in the county of New York and State of New York, being duly sworn and examined at the time and place above mentioned, upon his oath says that he is a member of the firm of David Valentine & Co., and that the said E. Dreyfus & Co. were, on and before the 21st day of January, A. D. 1873, and still are justly & truly indebted unto this deponent & David Valentine & Co., of New York, in the sum of sixty-two hundred and eighty-seven $\frac{19}{100}$ dollars, as set forth in the petition filed this day, as being the amount of the said E. Dreyfus & Co.'s indebtedness to David Valentine & Co.; that the said debt consists of three certain
77 promissory notes described as follows: One for two thousand and ninety-one $\frac{67}{100}$ dollars, dated New York, August 12th, 1872, made and signed by E. Dreyfus & Co., and payable five months after date, to the order of David Valentine & Co., at the Bank of America, New

Orleans, La.; one note for $2,097.67, dated New York, August 29th, 1872, made and signed by E. Dreyfus & Co., & payable four months after date, to the order of David Valentine & Co., at the Bank of America, New Orleans, La.; one note for $2,091.68, dated at New York, August 29th, 1872, made and signed by E. Dreyfus & Co., and payable five months after date, to the order of David Valentine & Co., at the Bank of America, New Orleans, La.; also an account for twelve dollars and seventeen cents for goods purchased from David Valentine & Co., August 31st, 1872, in New York City.

(Signed) FREDERICK A. MACY,
Petitioning Creditor.

78 On the 21st day of January, 1873, before me personally appeared Frederick A. Macy, a member of the firm of David Valentine & Co., the above-named petitioning creditors, and was duly sworn to the truth of the following statement:

(Signed) C. S. KELLOGG,
Register in Bankruptcy.

In the district court of the United States for the district of Louisiana.

In the matter of E. Dreyfus & Co., against whom a petition for adjudication of bankruptcy has been filed on the 21st day of January, A. D. 1873, in bankruptcy, at the city of New Orleans, in said district, on the 21st day of January, A. D. 1873, before C. S. Kellogg, one of the registers of said court in bankruptcy.

Frederick A. Macy, a member of the firm of David Valentine
79 & Co., of the district of New York, New York City, and State of New York, being duly sworn and examined, upon his oath says that his means of information as to the debt and its amount are from his own knowledge and from the possession by this deponent of the promissory notes and a/c mentioned in the petition foregoing.

And the means of information and knowledge of the acts of bankruptcy committed by E. Dreyfus & Co. are derived from information received from Samuel W. Lambeth, his agent and attorney in fact, who was sent to Monroe to see to the interest of the deponent, to wit, that the said E. Dreyfus and Co., within the six calender months next preceding the date of this petition, did commit acts of bankruptcy within the meaning of said act, to wit, that the said E. Dreyfus & Co., within the period aforesaid, in the district of Louisiana, at Monroe, Louisiana, being possessed of certain property, goods, wares
80 and merchandise, etc., did remove said goods, rights, credits, merchandise beyond the reach of deponent and other creditors, for the purpose of defrauding the deponent and other creditors, and to prevent the attachment or seizure of said goods, etc.; that the said E. Dreyfus & Co., within the time aforesaid, shipped off from their place of business large amounts of their valuable goods and merchandise, and disposed of them or secreted them so deponent and other creditors cannot find them; that said E. Dreyfus & Co. purchased said goods ostensibly to be sold in due course of trade in Monroe, their place of business; that instead of so doing they shipped large quantities of said goods and merchandise to other markets, and other goods were stopped in transits from the place they were purchased to Monroe, La., and either sold at a sacrifice or disposed of in some manner so
81 that they are safe from the pursuit of deponent and other creditors.

And from information received from the said Samuel W. Lambeth, and from J. E. Austin, of New Orleans, and other persons, deponent believes that the said E. Dreyfus & Co., within the period aforesaid, in the district of Louisiana, at Delta, La., about first of December, 1872, being possessed of certain goods, wares, and merchandise, etc., did sell or transfer a large quantity of said goods, say about the value of twenty thousand dollars, to one Moses Feibelman, of Delta, Louisiana, for less than their value, and with intent to defraud deponent and other creditors of the said E. Dreyfus & Co., and that the said E. Dreyfus & Co., within the time aforesaid, has assigned or conveyed a large quantity of the goods they were poss'ed of to parties in New Orleans, Louisiana, to wit: Mrs. Caroline Weil, Louis Stern & Bros., Hoffman & Marks, and others, with the intent to defraud your deponent and other creditors of
82 E. Dreyfus & Co.; and, further, deponent, from his own knowledge, and from the document marked C, believes that the E. Dreyfus and Co., within the period aforesaid, and within said district, at Monroe, Louisiana, being merchants, have fraudulently stopped, and have not resumed, payment of their commercial paper within a period of fourteen days, to wit, on a note made by E. Dreyfus & Co., dated at New York, Aug. 29th, 1872, payable four months after date, to the order of the firm of David Valentine & Co., of which deponent is a member, which said note is for $2,091.67, and was due on the 1st day of January, 1873, at the Bank of America, in this city; three notes, held by E. Batchelor & Co., made by the said E. Dreyfus & Co., one due December 4, 1872, for $1,796.63, one due Dec. 6, 1872, for $1,796.63, one due Dec. 5, 1872, for $810.11; also on a note made by E. Dreyfus & Co. in favor of H. B. Claflin & Co., for $5,053.00, due December 23d,
83 1872: also, on a note by E. Dreyfus & Co. in favor of John Hill & Co., for $624.18, due December 6th, 1872.

On the 21st day of January, 1873, Frederick A. Macy, the abovenamed witness, appeared personally, and was duly sworn to the truth of the foregoing me.

(Signed) FREDERICK A. MACY.
(Signed) C. S. KELLOGG,
Register in Bankruptcy.

Order on petition.

Let the defendants, Emanuel Dreyfus and Marcus Weil, be arrested and held in custody by the marshal till they give bond and security in the sum of $500 each, conditioned for their appearance whenever required by the court.

It is further ordered that the marshal take provissional possession of all the property of said def'ts, real and personal, belonging to said firm of E. Dreyfus & Co., or the individual members thereof, and par-
84 ticularly the merchandize pretended to have been transferred to Moses Feiblemen, at Delta, La., & of all the books of account, bank-books, and papers of or relating to the business of said firm of E. Dreyfus & Co., and hold the same subject to the further orders of this court.

January 21st, 1873.

(Signed) E. H. DURELL, *Judge.*

Order to show cause upon creditors' petition.—Issued January 21, 1873.

In the district court of the United States for the district of Louisiana.

IN THE MATTER OF E. DREYFUS & CO., against whom a petition for adjudication of bankruptcy was filed on the 21st day of Jan'y, A. D. 1873. } No. 1265.

DISTRICT OF LOUISIANA, *ss:*

85 Upon filing proofs sustaining the allegations of the petition aforesaid it is ordered that the said Emanuel Dreyfus, Marcus Weil, Mrs. Fannie Weil, widow of C. Weil, dec'd, Mrs. Caroline Weil, widow of Sam'l Weil, dec'd, ind'v'y and as members of said firm, do appear at this court, as a court of bankruptcy, to be holden at New Orleans, in the parish of Orleans and State of Louisiana, and district aforesaid, on the 3d day of February, 1873, at 11 o'clock a. m., and show cause, if any there be, why the prayer of said petition should not be granted; and it is further ordered that a copy of said petition, together with a copy of this order, be served on said defendants, by delivering the same to them personally, or by leaving the same at their last usual place of abode in said district, at least five days previous to the day herein required for their appearance.

86 Witness the Hon. Edward H. Durell, judge of the said court, and the seal thereof, at New Orleans, in said district, on the 21st day of January, A. D. 1873.

[SEAL.] (Signed) E. H. DURELL, *Judge.*

Writ of provisional seizure.—Issued 21st of January, 1873.

UNITED STATES OF AMERICA:

District court of the United States, district of Louisiana.

D. VALENTINE & CO. ET AL. *vs.* E. DREYFUS & CO. } No. 1265.

The President of the United States to the marshal of the United States for the district of Louisiana, greeting:

87 You are hereby commanded, in the name of the United States and of our district court, to take provisional possession of all the property, real and personal, belonging to the firm of E. Dreyfus & Co., and to Emanuel Dreyfus, Marcus Weil, Mrs. Fannie Weil, widow of C. Weil, and Mrs. Caroline Weil, widow of Sam'l Weil, the individual members of said firm, and of all the books of account, bank-books, & papers relating to the business of said firm, in whose hands soever you may find the same, within your district, and particularly the goods, wares, and merchandise pretended to have been transferred and sold by the defendants to Moses Feibelman, of Delta, and hold the same subject to the further orders of our court.

Witness the Hon. E. H. Durell, judge of said court, at New Orleans, this 21st Jan'y, 1873.

88 [SEAL.] (Signed) K. LOEW, *Dy Clk.*

Marshal's return thereon.

Received January 22nd, 1873, and on March 3rd, 1873, in obedience to this writ, I seized and took into my possession the property described in the inventory hereto attached, marked Exhibit "A," consisting of 24 pages, and made a part of this return, at the town of Delta, parish of Madison, the same being the property of the defendants, and now hold the same subject to the further order of the court.

New Orleans, March 25th, '73.

(Signed) S. B. PACKARD,
U. S. Marshal,
Per C. R. STEELE,
D'y U. S. Marshal.

89 *Exhibit A, referred to in foregoing marshal's return.*

STATE OF LOUISIANA, MADISON PARISH,
Delta, March 3d, 1873.

1.

We, the undersigned appraisers, acting under the authority of the United States marshal for the district of Louisiana, do find the following goods in the store of Moses Feibelman, in Delta, La., and do assess the same as follows, to wit, namely:

INVENTORY.

3	half bbls. whiskey, marked ◇D◇, Monroe, La., 26 gal. each	*a*	2 50	gal.	..	$195 00
1	bbl. whiskey, marked ◇F◇, 46 gal	*a*	1 25	"	..	57 50
1	bbl. Robinson Co. whiskey, m'ked Shoo Fly, cont'g 46 gal., shipped by Damon & Co., St. Louis, Mo	*a*	1 25	"	..	57 50
1	barrel (broken p'k'ge) Live Oak whiskey, 20 gal	*a*	3 00	"	..	60 00
3	" Crescent whiskey (Damon & Co.) 135 gal	*a*	95c.		..	128 25
1	" Chicken do. 46 gal	*a*	80c.		..	36 80
1	" Reserved do. 46 "	*a*	95c.		..	43 70
5	bbls. Monongahala do. 3 bbls. X, 138 gal	*a*	1 25		..	172 50
	1 " XXX, 46 "	*a*	2 00		..	92 00
	1 " XXX, 46 "	*a*	2 25		..	103 50
	Amount carried to page 2					
90	Am't bro't forward from page 1					
	1 bbl. "My choice" whiskey, 46 gals	*a*	$1 50		..	69 00
4	half bbls., Marked M. Feibelman, Delta, La., 2 half bbls. choice Bourbon whiskey, 46½ gals.	*a*	1 25		..	58 12
	½ bbl. sweet cordial, 26 gals	*a*	$1 75		..	45 50
	½ do. ginger 26 "	*a*	1 75		..	45 50

2	bbls. vinegar, marked M. Feibelman, Delta, La., 96 gals	*a*	2 72	..	26 35
1	" gin, " /F , Delta, La., 45 gals	*a*	1 25	..	56 25
2	" coal oil M. F., Delta, La., 96 gals.	*a*	30c.	..	28 80
8	" pork, M. F., Delta, La., from Cheathan & Draughan, St. Louis	*a*	$15 00	..	120 00
1	empty whiskey bbl., ⟨D⟩, Monroe, La	*a*	1 00	..	1 00
29	bbls. XXX flour, no mark	*a*	10 00	..	290 00
1	Nest bathing tubs, all marks obliterated, original p'k'g's	*a*	20 00	..	20 00
4	kegs molasses, cont'g 80 gals	*a*	90c.	..	72 00
1	lot plunder		$30 00	..	30 00
4	bbls. sugar, 1,100 lbs	*a*	12½c.	..	137 50
1	" meal, no mark		3 50	..	3 50
15	kegs lard, 750 lb. nett	*a*	13½c.	..	101 25
22	" nails	*a*	7 00	..	154 00
2	barrels meal	*a*	3 50	..	7 00
1	empty barrel, ⟨D⟩, Monroe, La	*a*	1 00	..	1 00
1	keg molasses, 10 gals	*a*	1 00	..	10 00
9	kegs lager beer	*a*	3 50	..	31 50
32	sacks C salts, no mark	*a*	2 25	..	72 00
7	do. fine " no mark	*a*	2 50	..	17 50
1	barrel lard, A. Hockett, Mound Station, La., 200 lb	*a*	13½c.	..	27 00
7	bales hay	*a*	$6 00	..	42 00
1	tierce hams, 609℔ nett	*a*	15c.	..	91 35
9	b'dl's empty sacks (U. O. Co.), 50 s'ks in b'dl's	*a*	12 50 b'dl	..	112 50
8	b'dl's ties, 56℔ ea	*a*	7c lb.	..	31 36
	Amount carried forward to p. 3				
91	Amount bro't forw'd from p. 3				
	2 doz. 1-gal. kegs	*a*	6 00 doz.	..	12 00
7	well-buckets	*a*	75c.	..	5 25
1	lot cooperage and jugs		$20 00	..	20 00
1	empty box, E. I. I. & Co., Monroe, La		10c.	..	10
15	bales hay	*a*	6 00	..	90 00
3	bales cotton, J. B.				
3	" " S. J.				
1	" " M. L.	*a*	$60 00	..	480 00
1	" " A. E.				
1	lot oil-sacks from Orleans Oil Co		5 00	..	5 00

The above goods are in the cellar of store.

Upstairs, left hand side, entering the store from front.

20	gals. sherry	*a*	2 50	..	50 00
10	" port wine	*a*	2 50	..	25 00
40	p'r trace-chains	*a*	75c.	..	30 00
7	single-trees	*a*	75c.	..	5 25
5	sacks bran	*a*	2 50	..	12 50
5	sacks oats	*a*	3 75	..	18 75
7	horse collars	*a*	1 25	..	8 75

1	bridle	*a*	2 25	..		2 25
5	doz. spades	*a*	10 00	..		50 00
15	" "	*a*	10 00	..		150 00
4 5/12	" long-handled shovels	*a*	8 00	..		37 33
1	" rakes	*a*	9 00	..		9 00
2	single-trees	*a*	75c.	..		1 50
	Amount carried forward to page 4					
92	Am't brought f'w'd from p. 3					
	22 boxes crackers, marked D. Arent, Farmersville, care J. Hoffman, Monroe, La., via Delta, 35# ea	*a*	15c.	..		115 50
1	case pickles, ½-gal. jars, D. & Co., Monroe, La		3 75	..		3 75
1	platform schales		890 00	..		90 00
4	single-trees	*a*	75c.	..		3 00
3	cases canned corn, 6 doz. in lot, E. D. & Co., Monroe, La	*a*	3 00 doz.	..		18 00
1	case peaches, 2 doz. in lot, E. D. & Co., Monroe, La	*a*	3 25 "	..		6 50
7	boxes starch 280# E. D. & Co., Monroe, La	"	10c.	..		28 00
7	" candles 280 " " " " " " "	"	23c.	..		64 40
3	" " 120 " " " " " " "	"	23c.	..		27 60
9	" home bitters	"	6 75	..		60 75
2	" olives, marks erased top & end	"	5 50	..		11 00
4	" pickles	"	4 00	..		8 00
9	" soap, 675#	"	9½c.	..		64 12
1	" " 65#	"	7c.	..		4 55
5	" 2-lb. oysters. 10 doz	"	2 50	..		25 00
2	" 1 " " 4 "	"	2 50	..		10 00
3	" stick candy 150#	"	22c.	..		33 00
1	" star soap 60#	"	9c.	..		5 40
1	coal-scuttle		1 00	..		1 00
2	3-gallon kegs	*a*	1 50	..		3 00
1	2 " "	"	1 00	..		1 00
5	well-buckets	"	75c.	..		3 75
20	gallons molasses	"	1 00	..		20 00
40	" vinegar	"	27½c.	..		11 00
1	sett measures		2 00	..		2 00
10	gallons whiskey	*a*	75c.	..		7 50
10	" "	"	1 05	..		10 50
25	" "	"	1 35	..		33 75
	Amount carried forw'd to p. 5					
93	Amount bro't forw'd from p. 4					
	7 one-gallon kegs	*a*	75	..		5 25
9	two " "	"	1 00	..		9 00
8	well-buckets	"	76c.	..		6 00
4	one-gal. demijohns	"	1 25	..		5 00
2	riding-bridles	"	1 00	..		2 00
2	head-stalls complete	"	1 00	..		2 00
5	setts harness do.	"	16 50	..		82 50
18	back-bands	"	80c.	..		14 40
3	bridles	"	1 00	..		3 00
1	sett harness, complete	"	10 00	..		10 00
3	doz. blind-bridles	"	12 50 doz	..		37 50
20	pr. hamess	"	65c.	..		13 00
3	boxes soda, 180 lb	"	8½c.	..		15 30

1	" soap, 60⅌		"	7c.	..	4 20
1	case powder, M. Feibleman, Monroe, La.		10 00		..	10 00
2	cans do					
2	reams wrapping-paper, E. D. & Co., Monroe, La	a	2 00		..	4 00
1	box starch, 35⅌, F. & Co., Monroe, La	"	7c.		..	2 45
2	box Dr. Price' yeast powder 8 doz., E. D. & Co., Monroe, La	"	2 00		..	16 00
3	boxes cream crackers, 120⅌, E. D. & Co., Monroe, La	"	14c.		..	16 80
3	" soda crackers, 120⅌, E. D. & Co., Monroe, La	"	14c.		..	16 80
3	" crackers, 90⅌, E. D. & Co., Monroe, La	"	10c.		..	9 00
2	" silvered curtain-pins, D. & Co., Monroe, La	"	3 50		..	7 00
1	" soda, 60⅌, D. & Co., Monroe, La	"	9c.		..	5 40
1	" olives in pt. bottles, 2 doz., no mark	"	2 85		..	5 70
2	" pepper sauce, 2 doz	"	2 00		..	4 00
4	boxes Alpine " 4 "	"	3 50		..	14 00
2	" pt. pickles 2 "	"	2 00		..	4 00
1	" box brandy cherries, 1 doz	"	4 25		..	4 25
	Amount carried forward to p. 6					
94	Am't bro't f'w'd from p. 5					
	2 boxes ½ gal. pickles, 2 doz	a	4 50		..	9 00
3	" 6 doz. tomatoes	"	3 75		..	22 50
1	" brandy peaches, 1 doz	"	3 75		..	3 75
4	doz. con. lye	"	1 25		..	5 00
1	box 2 doz. pickles, D. & C., Monroe, La.	"	6 00		..	12 00
1	b'dle. rope, 20⅌, E. D. & Co., " " "		15c		..	3 00
3	box. sieves, E. D. & Co., " " "		4 25		..	12 75
1	doz. buckets " " " " "		8 50	doz	..	8 50
1	box lima beans, " " " " "		7 00	box	..	7 00
1	box telegraph matches		3 75		..	3 75
2	" coffee-mills, E. D. & Co., Monroe, La.	a	4 87½		..	9 75
2	reams wrapping-paper, no mark	a	1 50	r.	..	3 00
1	bdl. paper sack		1 50		..	1 50
2	r'ms wrapping-paper	a	1 00		..	2 00
1	bdl. sacks		2 00		..	2 00
1	doz. buckets, E. D. & Co., Monroe, La		12 00		..	12 00
2	water-coolers, " " " " "	a	6 50	pc.	..	13 00
2	box. Bavaria bitters	"	8 25		..	16 50
2	reams wrapping-paper	"	1 00		..	2 00
1	" " "	"	1 25		..	1 25
5	" " "	"	2 00		..	10 00
2	clothes-baskets to E. D. & Co., Monroe La.	"	3 50		..	7 00
4	doz. wash-boards, " " " " "	"	3 50		..	14 00
4	boxes claret	"	4 75		..	19 00
3	" W. wine	"	4 75		..	14 25
1	" " "	"	4 75		..	4 75
3	" Imperial wine	"	20 00		..	60 00
3	b'sk's champagne, E. D. & Co., Monroe, La	"	25 00		..	75 00
1	box pepper sauce, E. D. & Co., Monroe, La	"	2 50		..	2 50
	Amount car'd f'w'd to p. 7					

95	Am't bro't f'w'd from p. 6				
	3 box Alpine soap, E. D. & Co., Monroe, La	*a*	$2\frac{1}{2}$ ..		7 50
1	" deviled ham, E. D. & Co., Monroe, La.	"	10 00 ..		10 00
3	bbl. covers, " " " "	"	50c. ..		1 50
$3\frac{1}{2}$	doz. wash-boards, " " " "	"	3 50 ..		12 25
1	bale sacks, " " " "	"	10 00 ..		10 00
1	b'dle paper sacks	"	1 25 ..		1 25
3	boxes peaches, 6 doz., E. D. & Co	"	3 25 doz...		19 50
1	" corn 2 "	"	2 75 ..		3 50
1	" lima beans, 2 "	"	3 50 ..		7 00
2	" raisins, E. Dreyfus & Co., Monroe, La	"	3 50 ..		7 00
4	market-baskets	"	45c. ..		1 80
6	boxes toilet-soap	"	2 25 box...		13 50
1	doz. sieves	"	2 50 ..		2 50
$3\frac{10}{12}$	" " E. Dreyfus & Co., Monroe, La.	"	25c. ..		2 75
6	boxes raisins, " " " "	"	4 50 ..		27 00
5	" pipes " " " "	"	1 25 ..		6 25
$\frac{1}{2}$	doz. buckets " " " "	"	12 00 ..		6 00
$\frac{1}{2}$	" " " " " "	"	12 00 ..		6 00
5	buckets, " " " "	"	1 00 ..		5 00
1	wash-board " " " "	"	25c. ..		25
$3\frac{8}{12}$	doz. buckets, " " " "	"	3 00 ..		11 00
$\frac{1}{2}$	" " " " " "	"	12 00 ..		6 00
6	nests " " " "	"	3 00 nest..		18 00
10	gals. whiskey	"	2 50 ..		25 00
4	pr. spring balances	"	3 00 ..		12 00
5	doz. flasks	"	1 50 doz...		7 50
5	gal. sherry	"	3 00 ..		15 00
1	doz. wash-pans	"	2 00 doz...		2 00
1	box soap		2 00 ..		2 00
	Amount carried f'w'd to page 8				
96	Amount brought f'w'd from p. 7				
	8 boxes lard	*a*	40c. bx..		3 20
6	coffee mills	"	45c. ..		2 70
3	tin buckets	"	10c. ..		30
1	nest "	"	1 50 ..		1 50
1	"		40c. ..		40
3	nests boxes	*a*	50c. ..		1 50
6	hatchets	*a*	75c. ..		4 50
$6\frac{1}{12}$	doz. hoes	*a*	9 00 ..		54 75
15	boxes axle-greese	*a*	20c. ..		3 00
100	lb. rice	*a*	10c. ..		10 00
12	" tea	*a*	1 25 ..		15 00
15	blacking-brushes	*a*	25c. ..		3 75
$\frac{1}{2}$	doz. girths	*a*	6 00 doz...		3 00
8	brushes	*a*	25c. ..		2 00
2	molasses-gauges	*a*	75c. ..		1 50
8	axes	*a*	1 25 ..		10 00
2	boxes pipes	*a*	75c. ..		1 50
35	lb. soda	*a*	10c. ..		3 50
37	" tobacco	"	75c. ..		27 75
16	" "	"	45c. ..		7 20
20	" candles	"	23c. ..		4 60
25	" crackers	"	12c. ..		3 12

7	boxes deviled hams	"		50c.	..	3 50
50	lbs. shot	"		12½c.	..	6 25
3	boxes spice	"		17c.	..	51
2	" cloves	"		5c.	..	10
1	lot matches	"		50c.	..	50
1	box tacks	"	8	00	..	8 00
1	" soap	"	2	50	..	2 50
	Amount carried to p. 9					
97	Amount brought from p. 8					
	30 lb. soap	*a*		7c.	..	2 10
9	bottles pickles	"		75c.	..	6 75
20	lbs. starch	"		10c.	..	2 00
½	bbl. meal		2	00	..	2 00
1	bbl. flour (broken)		9	00	..	9 00
126	lbs. sad-irons	*a*		10c.	..	12 60
120	" sugar	"		8c.	..	9 60
5	reams paper	"	1	50	..	7 50
½	bbl. salt	"	2	00	..	2 00
1	lot salt	"	1	00	..	1 00
1	lot lap-rings	"	1	00	..	1 00
1⅝	doz. corn	"	3	50	..	5 83
2⅓	" peaches	"	3	25	..	8 12
2⅓	" oysters	"	3	75	..	9 37
10	" yeast-powders	"	2	00	..	20 00
3	" oysters	"	3	00	..	9 00
21	boxes mustard	"		75c.	..	15 75
18	" "	"		75c.	..	13 50
15	lb. tobacco	"		65c.	..	9 75
35	" tobacco	"		45c.	..	15 75
27	doz. bluing	*a*	3	00	..	3 00
40	bottles snuff	*a*		35c.	..	14 00
1	doz. olive oil	*a*	3	50	..	3 50
4	lb. candy	*a*		20c.	..	80
32	lb. powder	*a*		35c.	..	11 20
7	" "	*a*		60c.	..	4 20
1	lot pipes	*a*	2	50	..	2 50
9	boxes con. lye	*a*		12½c.	..	1 12
1	bucket			50c.	..	50
	Am't carried f'w'd to p. 10					
98	Am't bro't f'w'd from p. 9					
	6 gross matches	*a*	3	75	..	22 50
15	doz. blacking	*a*		25 doz.	..	3 75
10	bottles sauce	*a*		15c.	..	1 50
12	" "	*a*		15c.	..	1 80
15	lb. candy	*a*		20c.	..	3 00
4	doz. yeast-powders	*a*	2	00	..	8 00
1½	" pine-apple (cans)	*a*	4	50	..	6 75
2⅖	" lima beans	*a*	3	50	..	7 58
2⅖	" peas	*a*	3	50	..	8 16
3⅖	" tomatoes	*a*	3	50	..	7 58
1	bottle wine			50c.	..	50
1	" cocktails			60c.	..	60
1	" sherry		1	00	..	1 00
4	gals. brandy	*a*	9	00	..	40 50
4⅖	doz. pickles	*a*	3	50	..	14 58

½	doz. "		"	6 00	..	3 00
1⅝	" pic'al/ilie		"	6 00	..	10 00
2	bot. brandy peaches		"	40c.	..	80
1	doz. lemon syrup		"	3 50	..	3 50
1⅔	" brandy cherries		"	4 50	..	4 87
10	bottle bitters		"	60c.	..	6 00
23	" sauce		"	45c.	..	10 35
7	" "		"	37½c.	..	2 62
10	" pepper "		"	16c.	..	1 60
5	" salad "		"	50c.	..	2 50
4	" olives "		"	50c.	..	2 00
20	lamps		"	50c.	..	10 00
4	nests tinware, E. Dreyfus & Co., Monroe, La		"	1 50	..	6 00
3	baskets, E. Dreyfus & Co., Monroe, La		"	75c.	..	2 25
	Am't carried f'w'd to p. 11					
99	Am't br't forw'd from page 10					
	1 lot buckets & boxes		"	2 50	..	2 50
33	frying-pans		"	60c.	..	19 80
17	stew-pans		"	70c.	..	11 90
8	pr. Mexican spurs		"	1 25	..	10 00
8	" " "		"	1 00	..	8 00
19	pipes		"	20c.	..	3 80
2	bridle-bitts		"	40c.	..	80
5	pr. spurs		"	40c.	..	2 00
1	horse-brush			90c.	..	90
1½	boxes soap (F. & A., Monroe, La.)			2 50	..	3 75
9	water-proof caps			90c.	..	8 10
6	lb. muskets "			90c.	..	5 40
27	lb. G. D. "			40c.	..	10 80
3½	lbs. chocolate			35c.	..	1 27
1	box candy			3 50	..	3 50
2	cans powder			40c.	..	80
13	p'c's Lowell, 522 yds			19	..	99 27
1	lot paper			2 00	..	2 00
20	lbs. sugar			13c.	..	2 60
1	pr. counter scales			10 00	..	10 00
25	lb. cheese			18c.	..	4 50
1	tobacco-cutter			50c.	..	50
40	lbs. butter			25c.	..	10 00
1	case, 2 doz., axle-grease, F. & Co., Monroe, La			2 00	..	4 00
2	buckets tobacco, L. Mayer, Delta	*a*		75c.	..	1 50
6	caddies do. 126	*a*		60c.	..	75 60
¼	keg powder	*a*	2	00	..	2 00
30	lb. dried apples	*a*		10c.	..	3 00
1	bal. sacks		50	00	..	50 00
	Am't carried f'w'd to p. 12					
100	Am't brought from p. 11					
	11 boxes axes	*a*	14	00	..	154 00
30	lb. fancy goods	*a*		25	..	7 50
1	lot nails		4	00	..	4 00
2	coils cotton rope, 64	*a*		38c.	..	24 32
382	lb. grass rope	*a*		22c.	..	84 04

100	lb. manilla do. E. Dreyfus & Co., Monroe, La	*a*	22c.	..	22 00
9	plows	*a*	8 50	..	76 50
4	long-handled shovels	*a*	1 25	..	7 00
7	Ames' spades	*a*	1 00	..	7 00
4	nests tubs (no mark)	*a*	5 00	..	20 00
16	kitts mackerel	*a*	1 50	..	24 00
40	lb. beans	*a*	6c.	..	2 40
16	axe-handles	*a*	18c.	..	2 88
4	cast-iron pots	*a*	7 00	..	28 00
96	lb. tobacco	*a*	75c.	..	72 00
90	lb. cheese	*a*	18c.	..	16 20
4½	sacks coffee, 750 lb	*a*	23c.	..	172 50
2	cases smoking-tobacco, 100 lb.	*a*	65c.	..	65 00
	Box in original condition—remarked (F) Delta, La				
9	rolls bagging, 450 yds	*a*	16c.	..	72 00
3	bbls. rice, 720 lb., M. F., Delta	*a*	10c.	..	72 00
19½	lb. crushed sugar	*a*	14²c.	..	2 82
262	" pul'r. "	*a*	14²c.	..	37 99
4	bbls. fair " 1,064 lb	*a*	92c.	..	101 08
190	yds. bagging	*a*	15c.	..	28 50
3	doz. brooms	*a*	3 50	..	10 50
2	box curtain pins, E. D., Monroe, La	*a*	3 00	..	6 00
2	half bbls. flour	*a*	3 50	..	7 00
101	Am't bro't forward from p. 12				
	1 lot grain (broken p'k'gs)	*a*	4 00	..	4 00
1	horse-collar		2 25	..	2 75
21	bridles	*a*	2 50	..	52 50
7	pr. trace-chains	*a*	40c.	..	2 80
8	breast do	*a*	40c.	..	3 20
1	saddle		7 00	..	7 00
2	do	*a*	10 00	..	20 00
1	do		8 00	..	8 00
1	do		10 00	..	10 00
1	do		7 50	..	7 50
1	do		5 00	..	5 00
1	do		3 50	..	3 50
1	do		8 00	..	8 00
1	do		16 00	..	16 00
4	pr. bridle-reins	*a*	50c.	..	2 00
12	girths	*a*	50c.	..	6 00
1	saddle		10 00	..	10 00
16	⅝ lines	*a*	15c.	..	2 40
3	black bands	*a*	75c,	..	2 25
16	H. ham	*a*	15c.	..	2 40
¼	powder, M. F., Deltta		2 00	..	2 00
1	lot spice		8 00	..	8 00
1	" pepper		5 00	..	5 00
1	" wrapping-twine		5 00	..	5 00
4	setts lines	*a*	2 75 sett	..	11 00
1	lot lamp-chimneys		3 00	..	3 00
1	" corks & bung-borer		10 00	..	10 00

2½	gallons cocktails, F. & Co., Monroe, La.	*a*	3 00	..	7 50
500	lb. shoulders	*a*	6 00	..	30 00
	Amount carried f'w'd to page 13				
102	Amount brought f'd from p. 12				
2	shot.guns	*a*	18 00	..	36 00
1	2-horse wagon		95 00	..	95 00
1	2 " " Thomth Skein		80 00	..	80 00
½	bbl. sugar, 125 lb. ⅌	*a*	12²	..	15 62
1	box h'ware from E. D. & Co., Monroe La., no mark on the box, the top having been scratched & original all erased, cont'g:				
4	setts fire-iron	*a*	2 00	..	8 00
3	spirit-levels	*a*	1 50	..	4 50
½	doz. hand-saws	*a*	1 50 ea.	..	9 00
2	fire-iron stands	*a*	75c.	..	1 50
23	pr. strap hinges	*a*	50c.	..	11 50
½	doz. f'r locks	*a*	75c.	..	4 50
12	knob locks	*a*	75c.	..	9 00
6	" "	*a*	75	..	4 50
15	mortice "	*a*	75c.	..	11 25
3	knob "	*a*	1 00	..	3 00
1	doz. ivory-handled knives	*a*	12 00	..	12 00
6	chisels	*a*	1 00	..	6 00
3	hand-axes *a*	*a*	1 00	..	3 00
3	cases coal-oil, 30 gal's	*a*	40c.	..	12 00
45	gal's " "	*a*	30c.	..	13 50
14	buggy-whips	*a*	75c.	..	10 50
½	doz. wagon-whips	*a*	9 00	..	4 50
Office furniture & fixtures					150 00
					8,121 38

Mr. Voelker represent the *is* foregoing is old stock M. Feibleman, of which himself is the partner.

103 Right-hand side of store entering front (lower floor).

3	single bedsteads	*a*	4 50	..	13 50
14	double do. do.	*a*	6 00	..	84 00
1	safe-tag marked "from M. Feibelman"	*a*	5 00	..	5 00
6	flag-bottom chairs	*a*	40c.	..	2 40
1	bedstead		3 00	..	3 00
3	patent leather bags, upstairs, R-H side.	*a*	75c.	..	2 25
128	chairs	*a*	50c.	..	64 00
1	safe		5 00	..	5 00
3	trunks	*a*	2 00	..	6 00
1	do	*a*	2 25	..	2 25
2	do	*a*	2 00	..	2 00
1	do	*a*	5 00	..	5 00
4	bed-quilts	*a*	1 00	..	4 00
1	p'ce flannel, 30 y'ds	*a*	50c.	..	15 00
1	" brown domestic, 30 y'ds	*a*	5c.	..	1 50
32	y'ds " "	*a*	8c.	..	2 56
75	" " "	*a*	12²	..	9 37

1	p'e Lowell, 30 y'ds	*a*	15c.	..	4	50
5	" brown cotton, 206 "	*a*	10c.	..	20	60
243	y'ds Lowell	*a*	16c.	..	38	88
20	" canton flannel	*a*	15c.	..	3	00
164½	" *y'ds* gingham	*a*	20c.	..	32	90
265	" bleached domestic	*a*	15⅔c.	..	33	12
45	" " "	"	15c.	..	6	75
55	" " "	"	16	..	7	20
130	" " "	"	15	..	19	50
91	" " "	"	16	..	14	56
	Amount carried f'w'd from page 14					
104	Am't forward from p. 13					
45	y'ds bleached domestic	*a*	10c.	..	4	50
92½	" " "	"	16c.	..	13	87
40	" " "	"	16c.	..	6	40
45	" " "	"	10c.	..	4	50
66	" " "	"	25c.	..	16	50
46	" " "	"	16c.	..	7	36
37	" " "	"	16c.	..	5	92
818	" " "	"	12c.	..	102	25
50	" tw'l flannel	"	30c.	..	15	00
60	" striped cotton	*a*	10c.	..	6	00
140	" ticking	*a*	15c.	..	21	00
80	" hickory	*a*	16c.	..	12	80
50	" checks	*a*	10c.	..	5	00
70	" denims	*a*	17c.	..	11	90
90	" "	*a* 16 00		..	14	40
120	" cottonade	"	20c.	..	24	00
37	" "	"	30c.	..	11	10
22	" jeans	"	40c.	..	10	00
38	" "	"	30	..	11	40
1	p'e " yardage off		7 50	..	7	50
35	y'ds "	"	30	..	10	50
1	p'e " " "		10 00	..	10	00
30	y'ds " "	*a*	40c.	..	12	00
50	" "	*a*	25c.	..	12	50
9	p'c's " " "	*a* 10 00		..	90	00
5	shuck-mattrasses	*a*	2 00	..	10	00
6	" "	"	3 00	..	18	00
2	saddles	*a*	5 00	..	10	00
1	bedstead		3 00	..	3	00
	Am't carried f'w'd to page 15					
105	Am't bro't f'w'd from p. 14					
2	pillows & one bolster		75c.	..		75
4	trunks (M. Feibelman, La.)	*a*	2 75	..	11	00
3	nests trunks " " "	*a*	5 00 nest	..	15	00
3	pr. pegged gaiters	*a*	1 00	..	3	00
30	pr. shoes	*a*	1 20	..	36	00
1	trunk		1 00	..	1	00
10	pr. boots	*a*	2 50	..	25	00
10	pr. shoes	*a*	1 25	..	12	50
18	pr. shoes	*a*	1 50	..	27	00
1	trunk (m'k'd Philip Rice, Monroe, La.) cont'g		2 00	..	2	00

45½	yds. cottonade	*a*	30c.	..	13 65
12	p'c's diaper	*a*	4 00	..	48 00
26	pr. brogans	*a*	1 50	..	39 00
29	" "	*a*	1 50	..	43 50
83	" "	*a*	1 50	..	124 50
10	" "	*a*	1 40	..	14 00
12	" pegged "	*a*	3 50	..	42 00
50	" lace shoes	*a*	1 00	..	50 00
12	" " "	*a*	1 20	..	14 40
22	" " "	*a*	90c.	..	19 80
15	" " "	*a*	1 50	..	22 50
30	" boys' shoes	*a*	75c.	..	22 50
12	" " "	*a*	85c.	..	10 20
15	" child' "	*a*	75c.	..	11 25
2	" boys' boots	*a*	1 50	..	3 00
4	" " "	*a*	1 75	..	7 00
6	" " "	*a*	2 00	..	8 00
10	" men's "	*a*	2 00	..	20 00
	Am't carried f'w'd to p. 16				
106	Amount brought f'w'd from p. 15				
12	pr. men's shoes	*a*	2 25	..	27 00
10	" " " "	*a*	7 00	..	70 00
1	case cont'g 60 pr. shoes (top & end marks obliterated)	*a*	2 50 pr.	..	150 00
1	trunk		2 50	..	2 50
1	do		2 00	..	2 00
12	cloth cloaks	*a*	2 75	..	33 00
1	case cont'g 6 pr. boots (marks on top & end of box badly scratched—good inside—from Orr & Lindsey)	*a*	3 00 pr.	..	18 00
5	pr. blankets	*a*	6 00	..	30 00
1	empty trunk	*a*	2 50	..	2 50
1	" "		2 00	..	2 00
1	trunk locked & cont'g		2 00	..	2 00
	46 yds. 6-4 cotton	*a*	50c.	..	23 00
	27 " " "	*a*	50c.	..	13 50
	39² " 10-4 sheeting	*a*	60c.	..	23 70
50	yds. jean	*a*	25c.	..	12 50
20	" cassimeres	*a*	30c.	..	6 00
30	" "	*a*	35c.	..	10 50
85	" osnaburgs	*a*	16c.	..	13 60
50	" br. cotton	*a*	12c.	..	6 00
257	" bl. do	*a*	10c.	..	25 70
202¾	" br. do	*a*	10c.	..	20 27
703	" calico	*a*	12²	..	87 88
3	p'c's ribbon	*a*	1 50	..	4 50
7	" ribbon	*a*	1 25	..	8 75
3	" "	*a*	1 50	..	4 50
1	" belting	*a*	2 50	..	2 50
1	" belting	*a*	1 00	..	1 00
	Amount carried f'w'd to p. 17				
107	Amount brought f'w'd from p. 16				
1	box awls		50c.	..	50
7	cakes soap		50c.	..	50

4	" "		20c.	..	20
3	awl-handles	a	10c	..	30
2	boxes violin-strings	a	75c.	..	1 50
2	p'c's ribbon	a	75c.	..	1 50
1	doz. combs		1 25	..	1 25
4	back combs	a	8c.	..	32
6	bottles perfumery	a	8c.	..	48
1	" "	a	15c.	..	15
2	pipes	a	25c. ea.	..	50
2	pocket-knives	a	25c. ea.	..	50
2	boxes pens	a	20c.	..	40
2	bunches wor. binding	a	50c.	..	1 00
10	spools thread	a	5c.	..	50
1	doz. watch-keys	a	50c.	..	50
5	pocket-books	a	50c.	..	2 50
12	b. buckles	a	15c.	..	1 80
1	lot Peter Funk jewelry—b'st-pins & E. rings, 2 watches, &c		20 00	..	20 00
6	cravats	a	15c.	..	90
1	case needles		5 00	..	5 00
1	show-case		10 00	..	10 00
295	yds shirting cambric	a	11c.	..	32 45
361	" calico	a	10c.	..	36 10
80	" poplins	a	20c.	..	16 00
24	" plaids	a	20c.	..	4 80
52	" "	a	30c.	..	15 60
90	" "	a	15c.	..	13 50
70	" "	a	25c.	..	17 50
	Am't carried f'w'd to p. 18				
108	Am't bro't f'w'd from p. 17				
	100 common delaines	a	15c.	..	15 00
225	yds. plain linsey	a	10c.	..	22 50
70	" wool delaine	a	25c.	..	17 50
16	" cotton	a	12c.	..	2 00
48	" calico	a	10c.	..	4 80
50	" cambric	a	12½	..	6 25
15	" opera flannel	a	35c.	..	5 25
25	" spotted do	a	15c.	..	3 75
33	" " "	a	20c.	..	6 60
80	" w't' "	a	25c.	..	20 00
40	" " "	a	25c.	..	10 00
28	" " "	a	15c.	..	4 20
20	" blue "	a	20c.	..	4 00
38	" twilled "	a	25c.	..	9 50
60	" gray "	a	25c.	..	15 00
15	" coat lining	a	15c.	..	2 25
36	" calico	a	10c.	..	3 60
75	" alpaca	a	25c.	..	18 75
35	" barege	a	20c.	..	7 00
5	" plaid shawls	a	25c.	..	1 25
1	" " "	a	1 25	..	1 25
1	" " "	a	2 00	..	2 00
5	doz. towels	a	2 50	..	12 50
8	"	a	12½	..	1 00
1½	" "	a	2 00	..	3 00

7	table-cloths	*a*	1 00	..	7 00
46	yds. table-linen	*a*	25c.	..	11 50
8	" damask	*a*	60c.	..	4 80
5	" table-cloth	*a*	25c.	..	1 25
	Am't carried f'w'd to p. 19				
109	Amount brought f'w'd from page 18				
	20 y'ds red damask	*a*	75c.	..	15 00
30	" brown sheeting	*a*	30c.	..	9 00
3½	doz. Madras ha'k'fs	*a*	2 00	..	7 00
1 10/12	" " "	*a*	1 50	..	1 25
3	doz. boxes paper collars	*a*	1 00 doz.	..	3 00
10	lbs. flax	*a*	60c.	..	6 00
2	doz. pack p'l'g cards	*a*	1 00d'z	..	2 00
29	" sp. thread	*a*	35c.	..	10 15
16	yds. tissue	*a*	40c.	..	6 40
1	box collars & & sleeves		5 00	..	5 00
1	lot trimmings	*a*	10 00	..	10 00
1	" edgings & insertings		5 00	..	5 00
1	" belts		2 50	..	2 50
10	hair nets	*a*	12½c.	..	1 25
1	lot bl'k buttons		2 50	..	2 50
4	p'c's ruffling	*a*	25c.	..	1 00
5	p'c's black velvet ribbon, (cotton)	*a*	50c.	..	2 50
10	scarfs	*a*	25c.	..	2 50
4	black veils	*a*	25c.	..	1 00
5	neck-ties	*a*	25c.	..	1 25
6	gross pearl buttons	*a*	75c.	..	4 50
4	" " "	*a*	1 00	..	4 00
2	qr gross agate buttons	*a*	1 00qr. gros.		2 00
1	lot horn do		75c.	..	75
1	" sewing silk		75c.	..	75
1	case needles		2 00	..	2 00
1	gross silk buttons		1 25	..	1 25
25	y'ds nainsook	*a*	25c.	..	6 25
40	" check muslin	*a*	15c.	..	6 00
	Am't carried to page 20				
110	Am't forward from page 19				
	80 y'ds check muslin	*a*	20c.	..	16 00
12	y'ds tarleton (damaged)	*a*	20c.	..	2 40
20	" Swiss	*a*	12c.	..	2 50
30	" "	*a*	15c.	..	4 50
4	" "	*a*	25c.	..	1 00
2	doz. ladies' cotton hose	*a*	1 00	..	2 00
10	p'r " " "	*a*	10c.	..	1 00
16	" " " "	*a*	15c.	..	2 40
15	" " " "	*a*	20c.	..	3 00
10	" " " "	*a*	15c.	..	1 50
2	doz. p'r " " "	*a*	1 50 doz.	..	3 00
10	p'r ladies' hose	*a*	20c.	..	2 00
1	doz. p'r " "	*a*	2 00	..	2 00
9	p'r " "	*a*	15c.	..	1 35
5	" " "	*a*	20c.	..	1 00
10	" half " "	*a*	25c.	..	2 50
6	" " " "	*a*	12½	..	75

20	" " " "	a	25c	..	5	00
1	doz. p'r " "	a	1 25	..	1	25
20	" " " "	a	12½c	..	2	50
1½	" " " "	a	3 50 doz	..	5	25
1	lot silk braid		2 50	..	2	50
10	p'r child' hose	a	10c	..	1	00
14	" misses "	a	12c	..	1	68
1½	doz. do "	a	1 75 doz.	..	2	62
25	y'ds linen diaper	a	25c.	..	6	25
35	" Irish linen	a	30c.	..	10	50
12	" " "	a	20c.	..	2	40

Amount f'w'd from page 21

111	Am't f'wd from page 20					
	2 p'c's cotton diaper	a	1 25	..	2	50
43	y'ds linnings	a	15c.	..	6	45
21	h'dk'fs	a	10c.	..	2	10
3½	doz. rings	a	25c. doz.	.		88
1	album		75c.	..		75
1	box brass jewelry		10 00	..	10	00
1	box bob'ins		1 00	..	1	00
1	" braid		75c.	..		75
1	" "		1 00	..	1	00
1	" floss		50c.	..		50
2	looking-glasses	a	15c.	..		30
8	H. S. h'dk'fs	a	25c.	..	2	00
6 doz.	" "	a	30c.	..	1	80
2½	" " "	a	1 75	..	4	37
5	gents "	a	15c.	..		75
2½	doz. gent's h'dk'fs	a	2 00	..	5	00
3½	" " "	a	1 50	..	5	25
10	" " "	a	10c.	..	1	00
½	" " "	a	6 00	..	3	00
1	" " "	a	1 00	..	1	00
1	box thimbles		50c	..		50
6	pair Berlin gloves, (ladies')	a	25c	..	1	50
2	doz. p'r misses "	a	1 00 doz	..	2	00
1½	" ladies kid "	a	8 00 doz	..	12	00
9	p'r buck "	a	30c.	..	2	70
1	doz. do "	a	3 00	..	3	00
1½	" gent's cotton "	a	75c.	..	1	13
7	p'r buck "	a	50c.	..	3	50
4	" " "	a	75c.	..	3	00

Amount carried f'w'd to page 22

112	Am't f'w'd from page 21					
	27 p'r calf gloves	a	50c.	..	13	50
10	p'r buck do	a	40c.	..	4	00
2	" gauntlets "	a	1 00	..	2	00
10	" cloth "	a	25c.	..	2	00
1	doz. p'r dogskin "	a	5 00 doz.	..	5	00
2	p'r fur tipped "	a	50c.	..	1	00
2	misses' corsets	a	75c.	..	1	50
7	do do	a	75c.	..	5	25
4	ladies' do	a	1 00	..	4	00
15	" do	a	1 25	..	18	75

3	p'ck'g's pins	*a*	75c.	..	2 25
9½	doz. toilet-soap	*a*	25c. doz.	..	2 37
4½	doz. table-cutlery	*a*	1 50 doz.	..	7 25
7	" dress cord	*a*	25c	..	1 75
1	lb. ball thread	*a*	40c. lb.	..	40
1	doz. bottles hair-oil	*a*	1 00 ea.	..	1 00
10	B. buckles	*a*	10c.	..	1 00
10	bottles hair-oil	*a*	10c.	..	1 00
12	boxes lilly white	*a*	10c	..	1 20
4	cases soap		25c.	..	1 00
29	tooth-brushes	*a*	10c.	..	2 90
1	chignon	*a*	25c.	..	25
1,000	envelopes		1 00	..	1 00
1	lot pen-holders		25	..	25
6	school-books		1 00	..	1 00
1	lot slate-pencils	*a*	25c.	..	25
½	r'm L. paper	*a*	1 50	..	75
15	band combs	*a*	20c.	..	3 00

Am't fw'd to page 23 .....

113 Amount f'w'd from p. 22 .....

	20 band combs	*a*	12²	..	2 50
1	lot do.		5 00	..	5 00
1	doz. razors		3 00	..	3 00
1	" knives		3 00	..	3 00
1	" forks		1 00	..	1 00
1½	" spoons	*a*	1 00	..	1 50
½	" I. T. "	*a*	50c. doz.	..	25
3	" table "	*a*	30c.	..	1 50
2½	" knives & forks	*a*	75c.	..	1 87
½	" knives & forks	*a*	1 00	..	50
1	p'r men's boots		4 50	..	4 50
1	doz. mem. books		1 50	..	1 50
½	" snuff-boxes	*a*	1 00 doz	..	50
½	" pocket-books (calf)	*a*	1 50	..	75
1	" morrocco do		3 25	..	3 25
3	" "	*a*	25c.	..	75
6	" "	*a*	30c.	..	1 80
3	" "	*a*	50c.	..	1 50
4	doz. narrow butts	*a*	1 50 doz	..	6 00
2½	" padlocks	*a*	2 50	..	6 25
6	gross screws	*a*	25c.	..	1 50
2	gong-bells	*a*	75c.	..	1 50
2	boxes window-fast'gs	*a*	75c.	..	1 50
1	doz. wardrobe-hooks	*a*	75c.	..	75
2	bootjacks	*a*	25c.	..	50
4	p'r gate-hinges	*a*	25c. pr	..	1 00
1	doz. butts	*a*	1 50	..	1 50
½	" door-bolts	*a*	75c.	..	37
1	" knob-locks	*a*	3 50	..	3 50

Am't f'w'd to page 24 .....

114 Am't f'w'd from page 23 .....

½	doz. cottage-locks	*a*	1 25	..	87
3	" "	*a*	50c.	..	1 50
3	" "	*a*	35c.	..	1 05

48	y'ds wh. jeans	*a*	12½	..	6 00
50	" " "	*a*	10c.	..	5 00
20	" wigans	*a*	12c.	..	2 50
30	" cambric	*a*	10c.	..	3 00
10	" crash	*a*	10c.	..	1 00
19	bed-spreads	*a*	1 50	..	28 50
8	skirts	*a*	75c.	..	6 00
3	Marseilles spreads	*a*	1 50	..	4 50
8	wh. skirts	*a*	1 50	..	12 00
3	calico do.	*a*	75c.	..	2 25
11	white do.	*a*	1 25	..	13 75
3	do. do.	*a*	1 00	..	3 00
4	calico do.	*a*	50c.	..	2 00
1	doz. hickory do	*a*	5 00	..	5 00
17	Canton flannel do	*a*	35c.	..	6 95
6	ribbed do	*a*	40c.	..	2 40
1	doz. wool overshirts	*a*	7 00	..	7 00
10	grey fl. shirts	*a*	50	..	5 00
6	white ribbed U. shirts	*a*	60	..	3 60
8	merino " "	*a*	1 00	..	8 00
9	p'r jean drawers	*a*	75c.	..	6 75
3	" " "	*a*	50c.	..	1 50
6	" ribbed "	*a*	75c.	..	4 50
7	wh. shirts	*a*	1 25	..	8 75
3	calico do.	*a*	75c.	..	2 25
	Amount f'w'd to page 25				
115	Am't f'w'd from page 24				
	9 doz. cotton tape	*a*	25c.	..	2 25
10	p'r suspenders	*a*	50c.	..	5 00
4	" "	*a*	25c	..	2 50
6	" "	*a*	30c.	..	1 80
6	" "	*a*	25c.	..	1 50
6	neckties	*a*	25c.	..	1 50
2½	doz. shirt fronts	*a*	3 50 doz	..	8 75
1½	" fancy " "	*a*	2 50	..	3 75
6	calico shirts	*a*	75c.	..	4 50
5	wool shirts	*a*	74c.	..	4 50
12	merino "	*a*	1 00	..	12 00
2	doz. men's caps	*a*	4 50	..	9 00
8	cas'imere coats	*a*	5 00	..	40 00
11	summer do.	*a*	2 00 p'e.	..	22 00
3	cottonade do.	*a*	1 25	..	3 75
16	tweed do.	*a*	2 00	..	32 00
6	satinet do.	*a*	3 50	..	21 00
6	do. do.	*a*	4 00	..	24 00
2	do. do.	*a*	5 00	..	10 00
16	p'r satinets pants	*a*	2 50	..	40 00
18	" " "	*a*	2 00	..	36 00
1	satines coat	*a*	3 00	..	3 00
20	p'r satines pants	*a*	1 85	..	37 00
6	" " "	*a*	2 50	..	15 00
7	coats	*a*	4 00	..	28 00
8	cotton velvets vests	*a*	2 00	..	16 00
9	bl'k satines coats	*a*	4 00	..	36 00
3	p'r jean pants	*a*	2 50	..	7 50

12	p'r kersey do.	*a*	1 00	..	12 00
	Am't carried to page 26				
116	Amount f'wd from page 25				
	8 jean vests	*a*	1 00	..	8 00
8	satinet do.	*a*	1 25	..	10 00
8	do. do.	*a*	2 00	..	16 00
1	lot dry-goods (damaged), remnants		10 00	..	10 00
40	y'ds Chambry ginghams	*a*	15c.	..	6 00
6	wool hats	*a*	35c.	..	2 10
½	doz. " "	*a*	24 00 doz	..	6 00
½	" felt "	*a*	30 00 "	..	15 00
½	" dr'ss "	*a*	18 00 doz	..	9 00
7	" boys' "	*a*	9 00	..	9 00
1	" men's "	*a*	10 00	..	10 00
1½	" " "	*a*	15c.	..	22 50
8	men's hats	*a*	1 50 ea.	..	12 00
1	doz. men's "	*a*	12 00	..	12 00
5	casimere "	*a*	1 50	..	7 50
5	felt "	*a*	1 50	..	7 50
1	doz. wool "	*a*	9 00	..	9 00
3	wool "	*a*	1 00	..	3 00
9	satchels	*a*	50c.	..	4 50
2	doz. hickory shirts	*a*	4 00 doz	..	8 00
118	y'ds br. domestic	*a*	12½c.	..	18 50
1½	doz. nubias	*a*	2 00 doz	..	3 00
36	p'r ladies' calf shoes	*a*	1 50 p'r	..	54 00
4	" misses bals. shoes	*a*	1 00	..	4 00
9	" child' shoes	*a*	50c.	..	4 50
10	" ladies' cloth gaiters	*a*	1 25	..	12 50
1	doz. misses " "	*a*	12 00	..	12 00
2½	" ladies' morrocco "	*a*	16 00	..	40 00
	Amount f'w'd to page 27				

117	Amount f'w'd from p. 26				
	1 doz. childs calf gaiter, *a* 12.00	*a*	12 00	..	12 00
4½	"ladies' laced " , *a* 20.00	*a*	20 00	..	90 00
1	child. slippers	*a*	9 00	..	9 00
22	p'r ladies' cong. gaiters	*a*	1 50	..	33 00
10	" misses' calf shoes	*a*	1 00	..	10 00
21	" ladies' half do do	*a*	1 50	..	1 50
9	" ladies' stitched cloth gaiters	*a*	1 75	..	15 75
29	ladies' hats	*a*	50c.	..	14 50
9	men' straw do	*a*	25c.	..	2 25
17	bl'k felt do	*a*	2 50	..	42 50
1	case, marked N. Feibelman, Delta (original marks erased), original p'k'ge, straps new, goods marked. War. & Co., N. Y., cont'g 24 p'r Jersey ties	*a*	30 00 d'z	..	60 00
7	mirrors	*a*	50c.	..	3 50
4	bl'k casimere hats	*a*	2 00	..	8 00
6	wool hats	*a*	75	..	4 50
4	boys' caps	*a*	35c.	..	1 45
3	doz. tumblers	*a*	75c.	..	2 25

1	" switches (hair)	*a*	75c.	..	75
5,000	cigars	*a*	10 00	..	50 00
6	augurs	*a*	25c.	..	1 50
1	trunk brass jewelry, "M. Feiblemen".	*a*	20 00	..	20 00
15	boxes paper collars	*a*	10c.	..	1 50
5	wallets	*a*	25c.	..	1 25
1	case (marked N. F.) original marks erased, cont'g 23 p'r calf gaiters	*a*	4 00pr.	..	92 00
1	lot loose buttons		50c.	..	50
	Am't f'w'd to page 28.				
118	Am't f'w'd from page 27.				
1	" lamp-wicks		50c.	..	50
1	box im., bl'k lace		3 00	..	3 00
1	case tacks, broken p'k'ge		75c	..	75
10	doz. col. sp. cotton		40c.doz.	..	4 00
1	box bl'k. trimmings		3 00	..	3 00
18	doz. c. c. plates	*a*	75c.	..	13 50
4	" " cups & saucers	*a*	50c.	..	2 00
4	pitchers	*a*	25c.	..	1 00
10	ewers & basins	*a*	50c.	..	5 00
1	doz. goblets	*a*	1 00	..	1 00
1	doz. small pitchers	*a*	3 00	..	3 00
1	lot glass-ware	*a*	2 50	..	2 50
1	doz. c c bowls	*a*	75c.	..	75
3	" small dishes	*a*	1 25	..	3 75
½	" molasses pitchers	*a*	25c.ea.	..	1 50
2	hoop-skirts	*a*	50c.	..	1 00
2	calico do.	*a*	50c.	..	1 00
3	wool do.	*a*	75c.	..	2 25
2	p'r suspenders	*a*	30c.	..	60
3	boys' caps	*a*	50c.	..	1 50
6	ladies' chemises	*a*	75c.	..	4 50
2	parasols	*a*	1 00	..	2 00
4	nubias	*a*	25c.	..	1 00
25	cotton umbrellas	*a*	75c.	..	18 75
2	doz. riding-bridles	*a*	24 00 doz.	..	48 00
1	" " "	*a*	15 00	..	15 00
5	p'r martingales	*a*	25c.	..	1 25
4	scrub-brushes	*a*	25c.	..	1 00
2	bl'ck'g do.	*a*	20c.	..	40
	Am't fw'd to p. 29				
119	Am't f'w'd from page 28.				
	2 doz. pint tin cups	*a*	75c.	..	1 50
2	tin dippers	*a*	10c.	..	20
5	surcingles	*a*	25c.	..	1 25
2	step-ladders	*a*	50c.	..	1 00
3	old pistols		10 00	..	10 00
1	box piquet trimming		5 00	..	5 00
11	doz. Coats' thread	*a*	60c.	..	6 60
1	lot shoe-strings		50c.	..	50
1	" tape & buttons		2 50	..	2 50
1	" pins		75c.	..	75
4	ladies' skirts	*a*	75c.	..	3 00

30	p'rs child's copper shoes	*a*	70c.	..	21 00
20	yds. bl'k silk	*a*	1 50	..	30 00
30	yds. jaconet	*a*	20c.	..	6 00
40	" check muslin	*a*	30c.	..	12 00
10	" mull swiss	*a*	37c.	..	3 75
80	" " "	*a*	25c.	..	20 00
9	pair bl'k casinet pants	*a*	3 00pr.	..	27 00
9	" " " "	*a*	2 00	..	18 00
					4,732 02

Office in rear of store and in same room.

1 large desk.....

120 Unclaimed.

1	case (top of box scraped so as to indicate the original marks as having been taken off) cont'g—				
2	plated pitchers	*a*	10 00	..	20 00
2	doz. plated t'spoons	*a*	5 00	..	10 00
1	" castor	*a*	7 00	..	7 00
2	" coffee-urns	*a*	6 00	..	12 00
2	" coffee-pots	*a*	4 00	..	8 00
2	" castors	*a*	6 00	..	12 00
2	t'pots	*a*	4 00	..	8 00
2	sugar-bowls	*a*	3 50	..	7 00
2	coffee-urns	*a*	5 00	..	10 00
2	molasses-pitchers	*a*	4 50	..	9 00
2	butter-dishes	*a*	4 50	..	9 00
2	call-bells	*a*	1 00	..	2 00
2	slop-bowls	*a*	2 00	..	4 00
4	goblets	*a*	2 00	..	8 00
2	pickle-castors, *a*	*a*	4 00	..	8 00
2	call-bells	*a*	1 00	..	2 00
8	setts t'spoons	*a*	2 50	..	20 00
4	fruit-baskets	*a*	2 50	..	10 00
2	soup-ladles	*a*	4 00	..	8 00
2	plates	*a*	3 00	..	6 00
4	revolving castors	*a*	7 00	..	28 00
2	rings	*a*	75c.	..	1 50
1	box cont'g silver-plated knives & forks, (ivory handles, 2 doz.)				50 00

F'w'd .....

121 Am't bro't f'w'd .....

1 case (box never been opened, original marks erased, now marked M. F., Delta.)

3	bed-room tin setts	*a*	4 00	..	12 00
1	case (original marks erased), M. F., Delta.				
2	large bronze clocks	*a*	15 00	..	30 00
2	small do.	*a*	2 50	..	5 00
3	harmonicons	*a*	50c.	..	1 50

1	sh. iron cylinder	*a*	1 50	..	1 50
6	trunks	*a*	7 50	..	45 00
1	case (original marks erased), M. F., Delta.				
6	hatchets	*a*	75c.	..	4 50
6	nail-hammers	*a*	50c.	..	3 00
6	do. do.	*a*	50c.	..	3 00
½	doz. spr. balances	*a*	30c.	..	1 80
12	nail-hammers	*a*	50c.	..	6 00
6	egg-beaters	*a*	1 00	..	6 00
2	shingling hatchets	*a*	75c.	..	1 50
1	lot paper bags	*a*	1 00	..	1 00
3	door-mats	*a*	1 00	..	3 00
1½	doz. paint-brushes	*a*	6 00	..	9 00
1	" pinking-irons	*a*	3 50	..	3 50
1	case (original marks erased), M. F., Delta.				
2	doz. bl'k'g-brushes	*a*	1 50	..	3 00
2	" horse "	*a*	5 00	..	10 00
1	same, top				2 50
½	doz. lanterns		3 00	..	3 00
1	" funnels	*a*	1 25	..	1 25
1	gr. watch-keys				1 00
	F'w'd				
122	Am't f'w'd				
	3 doz. curry-combs	*a*	2 50	..	7 50
2	pistols (revolvers)	*a*	10 00	..	20 00
2	tryers	*a*	50c.	..	1 00
1	shot-bag		75c.	..	75
1	powder-flask		75c.	..	75
1	case (marks erased), cont'g—				
10	b'sk'ts				
5	balls twine				7 00
1	case (marks erased)—				
	Box newly strapped & does not indicate having been opened before. The goods on the inside are marked from J. M. Davies & Co., N. Y.:				
1½	doz. shirts	*a*	30 00	..	45 00
6	do. w. wool u'shirts	*a*	12 00	..	72 00
½	do. w. Shaker fl. undershirts	*a*	18 00	..	9 00
½	do. gent's merino shirts	*a*	9 00	..	13 50
1	do. Shaker fl. drawers	*a*	24 00	..	24 00
1	do. do. do. do.	*a*	30 00	..	30 00
1	case (all marks erased, goods from J. M. Davies & Co., N. Y.), cont'g—				
4	doz. w. shirts	*a*	30 00	..	120 00
3½	" " "	*a*	22 00	..	77 00
2½	" " "	*a*	20 00	..	50 00
½	" " "	*a*	40 00	..	20 00
1½	" " wool u'shirts	*a*	12 00	..	18 00
1½	" " shirts	*a*	20 00	..	30 00
	Total amount				962 75

123 RECAPITULATION.

The above is the grand total of appraisement in the store of M. Feibelman, Delta, La., $13,816.15.

Delta, Madison Parish, La. March 11th, 1873.

(Signed) J. H. HOBART,
" E. B. GINON,
" JNO. W. POWELL,
Appraisers.

Petition for writ of error.—Filed March 7th, 1879.

United States circuit court.

MOSES FEIBELMAN ET AL. *vs.* S. B. PACKARD ET ALS. } No. 7397.

To the honorable the judges of the circuit court of the United States for the fifth circuit, district of Louisiana:

The petition of Moses Feibelman respectfully represents unto your honorable court that he instituted suit in the fourth district court for the parish of Orleans against Stephen B. Packard, Michael Gernon, and William R. Fish; that on the application of defendants said
124 suit was removed into the circuit court of the United States for the fifth circuit, district of Louisiana, and was there tried and judgment rendered against him.

Petitioner represents there was error in removing said suit from the State court to the United States circuit court; and that on the trial of said cause in the said circuit court the judge erred in refusing to give certain charges asked by plaintiff to the jury, and in giving certain charges to the jury, all of which appear by the bills of exception taken in this case, by which errors and the decision against petitioner he has been aggrieved and greatly damaged.

Wherefore petitioner prays for a writ of error from said decision of the circuit court of the United States to the Supreme Court of the United States, to be held on the 2nd Monday of October, 1879, in order that the said errors of the circuit court may be reviewed and corrected, and that the amount of bond for costs be fixed by this honorable
125 court, and for all necessary orders in the premises.

(Signed) J. & C. B. RAY, *Att'ys.*

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States on the second Monday of October, 1879, the petitioner giving bond in the sum of five hundred dollars with good and solvent security conditioned as the law directs.

March 7th, 1879.

(Signed) W. B. WOODS, *Judge.*

Bond for writ of error.—Filed April 2nd, 1879.

Know all men by these presents that we, Moses Feibelman as principal and Henry March as sureties, are held and firmly bound unto S. B. Packard, Michael Gernon, and W. R. Fish in the full sum of five hundred dollars, to be paid to the said S. B. Packard, Michael

126 Gernon, & W. R. Fish, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this second day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Moses Feibelman, plaintiff, and S. B. Packard et al., d'f'ts, judgment was rendered against the said plaintiffs; and the said Moses Feibelman having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said S. B. Packard, Michael Gernon, and W. R. Fish, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the 2nd Monday of October next:

127 Now, the condition of the above obligation is such that if the said Moses Feibelman shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) MOSES FEIBELMAN. [SEAL.]
(Signed) HENRY MARCH. [SEAL.]

Sealed and delivered in the presence of—
(Signed) F. B. VINOT.

Bond approved April 2d, 1879.
(Signed) EDW'D C. BILLINGS, *Judge.*

DISTRICT OF LOUISIANA, *ss:*

Henry March, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.

(Signed) HENRY MARCH.

Sworn to and subscribed before me this 2d April, 1879.
(Signed) F. B. VINOT,
U. S. Comm'r.

128 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 127 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial the case of Moses Feibelman & als. vs. S. B. Packard et als., No. 7397 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 3rd day of September, A. D. 1879.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify, that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 3rd day of September, A. D. 1879.

W. B. WOODS, *Judge.*

129 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court before you, or some of you, between Moses Feibelman and Stephen B. Packard, Michael Gernon, and William R. Fish, a manifest error hath happened, to the great damage of the said Moses Feibelman, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 7th day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 7398. Moses Feibelman, plaintiff in error, versus S. B. Packard et al., defendants in error. Writ of error. Filed March 7th, 1879. F. B. Vinot, d'y cl'k.

130 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Stephen B. Packard, Michael Gernon, and William R. Fish, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Moses Feibelman is plaintiff in error and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Moses

Feibelman, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 10th day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

W. B. WOODS, *Judge.*

131 (Indorsed:) United States circuit court. No. 7397. Moses Feibelman, plaintiff in error, vs. S. B. Packard et al., defendants in error. Citation.

Marshal's return.

Received Mar. 11, 1879, by the U. S. marshal, and on April 17th, 1879, served a true copy of the within writ of error on the within-named defendants, to wit, Stephen B. Packard, Michael Gernon, & William R. Fish, by handing the same to John R. Beckwith, attorney for said defendants in error, in person, he accepting service of the same.

E. S. CURRY,
Dy U. S. Marshal.

On the 17th day of April, 1879, personally appeared before me E. S. Curry, a deputy United States marshal for the district of Louisiana, and makes oath that he served a copy of the within writ of error on Stephen B. Packard, Michael Gernon, & William R. Fish, as stated in his official return hereon.

E. S. CURRY,
Dy U. S. Marshal.

Sworn to and subscribed before me this 17th day of April, 1879.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 327. Moses Feibelman, plaintiff in error, vs. Stephen B. Packard, Michael Gernon, and William R. Fish. Louisiana C. C. U. S. Filed 13th October, 1879.

REC. 327—4

Supreme Court of the United States.

No. 327.

MOSES FEIBELMAN ET AL.

versus

S. B. PACKARD ET AL.

The first point presented in this case is, whether it was legally removed from the State Court to the Circuit Court of the United States.

This suit was filed in the Fourth District Court for the parish of Orleans, Louisiana, on the 24th April, A. D. 1873.

Plaintiffs, *Moses Feibelman* and *George Volker*, charge in their petition, (page 6,) that they were commercial partners, and had been doing commercial business as such for two years at the town of Delta, La.; that their business was "a general receiving and forwarding and commercial and mercantile business in said town of Delta, keeping on hand, for wholesale and retail, a general assortment of liquors, provisions and groceries

of every kind, and were doing an extensive and lucrative business in furnishing country merchants, plantations and families with supplies, as well as a local retail business, amounting annually to seventy thousand dollars, and annually increasing." That about the 3d March, 1873, S. B. Packard, United States Marshal for the District of Louisiana, by his deputy, R. C. Steel, "seized and took forcible possession of their entire stock of goods, wares and merchandize; also, of their storehouse, together with their safe, books, notes, accounts, horses, mules, buggy, drays, and eight bales of cotton, and closed their storehouse, which has caused an entire suspension of their business; all of which is yet held in possession of said Marshal or his deputies, and of which petitioners have been entirely deprived up to this time;" that said seizure "purports to have been made under and by virtue of a writ issued by the Judge of the District Court of the United States for the District of Louisiana, in the suit entitled D. Valentine & Co. et al. vs. E. Dreyfus & Co., No. 1265 of the docket of said Court in bankruptcy, by which writ the said Marshal was directed to seize the goods and effects of E. Dreyfus & Co."

Petitioners further charge, "that all the goods, wares and merchandise and other things seized by said Marshal as above set forth were the sole and *bona fide* property of your petitioners, and not the property of E. Dreyfus & Co., or of either of the members of said firm, and in or to which they had no interest, and that

said Marshal or his deputies seized them, even if he pretended to act under said writ, at his own risk, forcibly and wrongfully;" which acts of said Marshal caused plaintiffs the damages as charged in their petition, and for which they claim judgment against said Packard.

On the 7th April, 1875, a motion and petition was filed in the State Court to remove this case to the Circuit Court of the United States. The grounds assigned in the petition for removal are (page 2 Printed Record):

1st. That at the time of the institution of this suit that Packard, defendant, was U. S. Marshal for the District of Louisiana, and was bound to obey the orders of the District Court of the United States. "That the duty and authority to obey and execute such orders and writs directed to him is imposed and conferred on and vested in him by the law of the United States and not by the laws of any State thereof; that the direction and manner in which he shall discharge the duties of his said office and execute such writs is also established and ordained solely by the acts of Congress, * * * * and that in any and all suits, prosecutions or claims made or instituted against said Marshal on account of any neglect, error or supposed wrong committed by such Marshal, involves and is a suit arising under the constitution and laws of the United States, within the intent and meaning of an act of Congress entitled, "*An Act to determine the*

jurisdiction of Circuit Courts of the United States, and to regulate the removal of causes from State Courts, and for other purposes. Approved March 3, 1875."

That petitioners' suit is instituted to recover damages "for wrongs and injuries alleged to have been committed by the said Packard, U. S. Marshal, in the execution of an order or writ issued by the District Court of the United States in and for the District of Louisiana, directed to him; that the manner in which he shall execute said process and his duties and responsibilities in the execution of said process are regulated and defined alone by the law of the United States, * * * and the proper courts of the United States have full and complete jurisdiction to hear and determine all matters involved in the cause."

The rule and petition for removal was heard by the State Court on the 14th April, 1875, and the Court refused to remove the cause. Page 5.

A copy of the said suit and proceedings were, however, obtained and filed in the Circuit Court of the United States, under a writ of *certiorari* from the Circuit Court of the United States, (pages 1 and 5,) and the Circuit Court of the United States having sustained the petition for removal, the case was put at issue and tried in the Circuit Court of the United States, and there being judgment in favor of defendants, the case has been brought to this Court by writ of error.

This suit is between citizens of the State of Louisi-

ana. The law under which defendant claims the removal provides: "That any suit of a civil nature * * * * brought in any State Court, * * * * * arising under the Constitution or laws of the United States, * * * * * either party may remove said said suit into the Circuit Court of the United States for the proper district." Statutes at Large of 1875, page 470.

The inquiry then is, does the cause of action in this case arise under the *Constitution or laws* of the United States? This is a suit for damages for trespass against Packard, Marshal of the United States, for forcibly and wrongfully taking possession of defendants' property and other wrongs to defendants, under color of a writ issued by the District Court of the United States for the District of Louisiana, directing the seizure of the property of E. Dreyfus & Co.. It is not predicated on any rights claimed under the constitution or laws of the United States. This claim for damages is a right under the State law. Under what provision of the Constitution or law of the United States is this claim made? Not on either! It cannot, then, be said that it arises under either. Packard having done the acts which resulted in the damage whilst he was Marshal of the United States, and under color of a legal writ in his hands, does not exempt him from damages for trespass under the State law. This suit could not have been brought in the United States Courts.

This suit is no part of the suit of D. Valentine &

Co. vs. E. Dreyfus & Co., in which the writ issued under which the Marshal is alleged to have committed the trespass. It is between Feibelman and Volker, who claim damage for the trespass of the Marshal in seizing and taking away their property, as both Feibelman and Volker and Packard are citizens of Louisiana.

This is not a suit to recover the property seized from the Marshal, but plaintiffs, Feibelman and Volker, in this case, abandon the property and sue the Marshal for damages to the value of the property seized, and for other damages. Does this suit, then, arise under any provision of the constitution of the United States or any law of Congress? Certainly not. Then where does the right to a removal exist?

The right of removal of a case from the State to the United States Court is statutory, and a strict compliance with the statute is necessary. The defendant, in his petition for removal, states no *fact* not stated and admitted by plaintiffs in their petition for removal—merely states what he understands to be *legal conclusions*, which adds nothing to his grounds for removal. 96 U. S. Rep. 199.

Previous to the act of Congress of March 3, 1875, it is clear there was no law authorizing the removal of a cause from the State to the United States Court on the ground that the suit arose under the constitution or laws of the United States. This was not one of the grounds on which a removal could be claimed prê-

vious this act. Such cases, however, might be carried to the Supreme Court of the United States after a final decree in the highest court in the State when is drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision is against their validity, or when any title, right, privilege or immunity is claimed under the constitution or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party under said constitution, treaty, statute, commission or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error, under the 25th section of the Judiciary Act, as amended by §2 of the act of February, 1867, being R. S. U. S. §709, the §2 of act of March 3, 1875, extends the right of removal, before trial in the State Court, to the Circuit Court of the United States, in cases *arising under the constitution or laws of the United States*, or treaty made under their authority; this covers a portion of the cases provided for in §3 U. S. 709, but not all of them; it does not cover cases of *authority exercised* under the United States, nor where any title, right, privilege or immunity is claimed under a *commission held or authority exercised* under the United States.

Previous to the enactments of the laws which compose R. S. §643, suits against revenue officers and

election officers could not be removed from the State Courts to the United States Circuit Court before the trial.

There does not seem to be any intimation in the laws of the United States that a suit against the United States Marshal in a State Court, for any cause whatever, can be removed from the State Court to the United States Court until after it is finally decided in the highest Court in the State, and then by writ of error to the Supreme Court under §25 of the Judiciary Act; §709 United States R. S.

The Court says in Gold Washing Co. vs. Keyes, 96 U. S. R. on page 203, that "a cause cannot be removed from a State Court simply because in the progress of the litigation it *may become necessary to give a construction to the constitution or laws of the United States; the decision of the cause must depend on that constitution.*" This covers the case before the Court fully. Also 94 U. S. R. 4.

Writs of error lie from the decisions of the highest Court of the State to the Supreme Court of the United States under R. S. §709, in the following cases:

1st. When is drawn in question the validity of a *treaty* of the United States and the decision is against it.

2d. When is drawn in question the validity of a *statute* of the State and the decision is adverse to the claim under the same.

3d. When is drawn in question the validity of an

authority exercised under the United States and the decision is adverse to the authority.

4th. When any title, right, privilege or immunity is claimed under the Constitution of the United States and the decision is against it.

5th. When any title, right, privilege or immunity is claimed under any statute of the United States and the decision is against it.

6th. When any title, right, privilege or immunity is claimed under any treaty and the decision is against it.

7th. When any title, right, privilege or immunity is claimed under any *commissoin* held or *authority* exercised under the United States and the decision is against it.

But only *such of those cases* as arise under the constitution, treaties or laws of the United States *are removable before trial* to the Circuit Court of the United States from State Courts.

Those cases in which is drawn in question the validity of an authority exercised under the United States, or where any title, right, privilege or immunity is claimed under any commission held or authority exercised under the United States are not removable to the Circuit Court of the United States under the act of March 3, 1875, or any other statute, whether such suit arises out of such acts or not.

The expression in §2 of act of March 3, 1875, "that any suit of a civil nature * * * rising under the

constitution and laws," etc., means that the claim must be predicated on the constitution or laws, etc.; that is, that the claim must be set up in plaintiff's petition as conferring a right derived from the constitution or laws etc.; that if such a claim is made in defence of a suit where no claim is set up by the plaintiff under the constitution or laws, it does not come within the provision of said act, and does not entitle defendant who sets up such a defence, to a removal of the case, or it must be shown in the petition for removal that the suit arises under the constitution or laws of the United States. This point is clearly stated in Gold Washing Co. vs Keys, 96 U. S. R. 197.

Applying these principles to the case before the Court, we find that plaintiffs set up no claim under the constitution or laws of the United States; their claim is in trespass for damages under the State law, and defendant in his petition for removal shows no ground for the removal; he does not even set up a justification of his acts under the writ in his petition for removal; he sets up no fact giving the Court, under any circumstances, ground for removal; he does not aver in his petition for removal that the property he seized belonged to the defendants in the writ under which he seized it, or that he was *specially directed* by the Court to seize the identical property he did seize, or in fact, any ground justifying the seizure that would protect him under the writ; his whole petition for removal is the mere assertion of legal inferences, and not facts

which this Court held, in the cases 96 U. S. R. 199, and 10 Otto, on page 323, was necessary to entitle a party to removal of the suit, the answer and other proceedings filed in the Circuit Court of the United States after the cause was taken to that Court, and all the proceedings had in that Court are *coram non judice*, as that Court was without jurisdiction in the case and cannot be invoked to show that it was a proper case for removal. Proper cause for removal must appear in the original petition, or in the petition for removal. 96 U. S. R. 1, 99.

The case of Buck vs. Colbath, 3 Wall. 340, on which defendant relied in the lower court as authority for the removal, we submit, is not applicable to the point under consideration. That was a case where a writ of error was taken from a judgment of the highest court of Minnesota to this Court, and the question was whether this court had jurisdiction of the case under the 25th section of the Judiciary Act. No question of remoual arose in the case. In that case, the Marshal of the United States was sued as a trespasser for taking defendant's goods under a writ of attachment against *other parties*. The Marshal justified under the writ. In the case now before the Court, the Marshal did not, in his petition for removal, state his grounds for defence; he merely alleges that he is regulated in the discharge of his duties as Marshal by the laws of the United States, and that any suit instituted against him as Marshal for trespass in executing a

writ is a suit arising under the laws of the United States.

The first clause in the decision in the case of Buck vs. Colbath, 3 Wall. 340, shows that it comes clearly within the 25th section of the Judiciary Act, as the defendant claimed the protection of "an authority exercised under the United States." This was matter of defence. Consequently, this suit did not arise out of the constitution or laws of the United States, which is necessary to constitute the right of removal; and no such question was raised in that case.

We have, in the foregoing pages of this brief, discussed this point.

This suit, as the one of Buck vs. Colbath, was instituted in the State Court, for the reason that both parties were citizens of the same State, and no law authorized the institution of the suit in a United States Court. The parties in this suit, Feibelman & Volker, plaintiffs, and Packard and others, defendants, were not parties to the suit of D. Valentine & Co.. et al. vs. E. Dreyfus & Co.. No issue decided in this last named suit was *res judicata* against the parties to the former of the above named suits. If Packard and the other defendants, in their answer in the Circuit Court, justify his seizure under the writ issued from the District Court of the United States, and the decision is against the protection claimed, then a writ of error may be

brought to this Court, as in the case of Buck vs. Colbath; but in all this no right to a removal from the State Court to the Circuit Court of the United States is given by law, as the case does not arise under the constitution or laws of the United States.

If the objection that this is not a case legally removable from the State Court to the Circuit Court of the United States, should not be sustained by this Court, then we proceed to examine the legal points raised on the trial of this case.

Before examining the legal points raised by the bills of exception, in order that the Court should properly understand the legal questions raised by the bills of exception, it will be proper to refer to the pleadings and the questions presented by them, which we now proceed to do.

The allegation in the petition that under the writ of provisional seizure the Marshal seized the property of plaintiffs, is admitted in the answer.

The answer sets out the proceedings in the case of D. Valentine & Co. vs. E. Dreyfus & Co. and copies the writ issued in that case, which directs, among other things, that "the goods, wares and merchandize pretended to have been transferred and sold by the defendants, E. Dreyfus & Co. to Moses Feibleman, at Delta," should be seized, page 14 of Record; the answer then avers: "That in obedience to the command

of said process, the said defendant, by his deputy, did obey and comply with the command of said writ according to the terms thereof, and did take into his possession and custody the goods, property and chattels described and referred to in said writ, and no other goods, property or chattels whatsoever, in which said act, said defendant had, from the nature of said writ, no choice or election whatever." Pages 12 to 15 of Record.

After alleging that the property seized was in the possession of the Court of Bankruptcy, which had jurisdiction to decide all questions as to its title or possession, the answer proceeds to allege that on "the 25th day of March, 1875, (this should be 1873,) the said plaintiff, by his counsel, did, as he legally might, voluntarily appear in said cause of D. Valentine & Co. vs. E. Dreyfus & Co. in said bankrupt proceedings, and then and there, by written allegations on that behalf, make and submit to the Court claim and demand for custody of the goods, chattels and property, etc. in the possession of the Court as aforesaid, the said goods and property, etc. then and there claimed and sued for, being the *same goods and chattels named and described in the said plaintiffs' petition herein*, and in said proceedings did set up and aver that the same were the property of him, the said Moses Feibelman." See page 15 of Record.

The above extracts from defendant's answer are

given to show that defendant acknowledged in his pleadings that he had seized under said writ the *same goods and chattels named and described in the said plaintiffs'* (Feibelman & Volker) *petition herein.*" This relieved plaintiff from making any proof of the fact of seizure, leaving open the legal question as to whether the seizure of those goods and property was legal under said writ.

This brings up the question whether the expressions contained in the writ of D. Valentine & Co. vs. E. Dreyfus & Co., which, after directing the seizure of all the property of E. Dreyfus & Co., further directs the seizure of "particularly the goods, wares and merchandise pretended to have been transferred and sold by the defendants (E. Dreyfus & Co.) to Moses Feibelman, of Delta," adds any additional force or obligation to the duties of the Marshal from what would have existed had those expressions not been in the writ.

It is very evident that a Judge has no right, under an order for writ of provisional seizure or attachment, to direct the seizure of specific property not in the hands of the debtor, unless a lien or mortgage rests on such property to secure the payment of the particular debt which is thereby sought to be inforced, much less to direct the seizure of property in the possession of third persons who are not made parties to the proceeding to enforce the lien.

In this case it is not pretended that any lien or

mortgage existed in favor of the seizing creditors, on any particular property of E. Dreyfus & Co., whether in their possession or in that of Moses Feibelman, which he may have bought from them, and there is no authority conferred by §40 of the Bankrupt Act authorizing the Judge to direct the seizure of property of the bankrupt in the possession of third persons, which would add any additional obligation on the Marshal to seize such property more than existed in the writ, without such special direction.

We then contend that this clause in the writ of provisional seizure is mere surplusage, adding nothing to the authority of the Marshal in executing the writ, and no more protecting him from making an illegal seizure than if it was not contained in the writ.

But there is still another very cogent reason why this part of the writ could not be obeyed and could afford no protection to the Marshal if he attempted to execute it—it is this: The only description in this clause of the writ is, "the goods, wares and merchandise *pretended* to have been *transferred* and *sold* by the defendants (E. Dreyfus & Co.) to Moses Feibelman at Delta;" this gives no specification of the thing to be seized; it does not contain an invoice of the goods, nor the description of any particular piece or parcel—nothing whatever to identify the thing to be seized, except the goods pretended to be transferred and sold to Moses Feibelman. This involved a judicial investigation, which the Marshal is not authorized

to make. This Court has laid down the law on this point with great clearness in the case of Buck vs. Colbath, 3 Wal. on page 343. In this case the Court says that the writs the Marshal is protected in executing when issued by a Court having jurisdiction are :

"1. Those in which the process or order of the Court describes the property to be seized, and which contains a direct command to the officer to take possession of that particular property. Of this class are the writs of replevin at common law, orders of sequestration in chancery, and nearly all the processes of admiralty courts by which the *res* is brought before it for its action."

The Court ptoceeds to say:

"Those in which the Court is directed to levy the process upon property of one of the parties to the litigation sufficient to satisfy the demand against him, without describing any specific property to be thus taken. Of this class are the writ of attachment, or other mesne process, by which property is seized before judgment, to answer to such judgment when rendered, and the final process of execution, elegit, or other writ by which an ordinary judgment is carried into effect."

Under the 40th section of the Bankrupt Act, the Court, for certain cause shown, is directed to "issue a warrant to the Marshal * * * forthwith to take possession, provisionally, of all the property and effects of the debtor, and safely keep the same until the

further order of the Court." This confers no authority on the Court to order the seizure of property in the hands of third persons; and in the case at bar, the order, even if the Court had such authority, is too indefinite to be executed. The Marshal may, under an order issued, according to this section of the bankrupt act, seize the property of the defendant in the hands of a third person, but in seizing property in the hands of third persons, he does so at his *peril*, and if he should seize any property not liable to seizure under the writ, in the hands of a third person, he *commits a trespass*, and is liable in damages to the party injured.

The bankrupt act, as every other law of the United States, is a statute law. There is no provision of that law that authorizes the depriving of any person of his property without due process of law, and the rule XIII in bankruptcy, prescribing the authority and duty of the Marshal in executing writs, such as that under consideration, admits the liability of the Marshal in damages for seizing property not belonging to the bankrupt, and provides a method for protecting him where he may be required to do so by th e creditors.

In this case, the defendant relies on protection under the writ, he has not *set up*, that the plaintiffs had *acquired* property in *fraud* of the *creditors*, not that he held it under a *simulated* transfer. He has not *raised the question of title* to this property by his answer. The Court could not settle the question of title *ex parte* and without a hearing of the claimants, sim-

ply by issuing the order of provisional seizure. The execution of such a writ would be depriving a person of his property without due process of law.

The only other special defence set up in the answer is declining the jurisdiction of this Court until the decision by the Bankrupt Court of a rule taken therein by plaintiffs in this case to have said seizure set aside and the possession of the property restored to them.

The Bankrupt Court had no jurisdiction to try the question of title to the property in this case. Such a suit would have to be instituted in the Circuit or District Court, sitting as a common law or equity court, as the case might be. This question is settled in the case of Knight vs. Chancy, 5 B. R., on p. 308-9.

The proceedings that were taken in the Bankrupt Court were merely to have the seizure released, as having been illegally made, the same as in the cases of In Re Harthiel, 4 B. R. 131; In Re Marks, 2 B. R. 175, and not to try the title to the property. Besides, the Court never having decided on that application, and the property having been sold, and no recourse left to plaintiffs except this suit for damages.

These special defences then, have no legal force, and were not insisted on by the defendant, the case was tried on the *general issue*.

The answer having admitted the seizure of the property as described in plaintiffs' petition, nothing was left for plaintiffs to establish except the amount of the damages they had sustained.

There can be no doubt but that when the Marshal makes a seizure under a warrant issued under the 40th section of the bankrupt law, he does it at *his peril*, and if he seizes property belonging to a third person, he is a *trespasser*, and liable in *damages*. See cases of In Re Marks 2, B. R. 175; In Re, Harthiel 4, B. R. 131; In Re, Muller 3, B. R. 86. This seems to be the universal jurisprudence on this point.

On the trial of this case, plaintiffs' counsel asked the Court to charge the jury on several points, which charges were refused, and, the case having been decided adversely to the plaintiffs, they prosecute this writ of error.

The judge was asked by the plaintiff's counsel to give in charge to the jury certain legal points specially detailed in the bill of exception.

1st. "That neither Moses Feibelman nor the firm of Feibelman & Volker were parties to the suit or proceeding of D. Valentine & Co. vs. E. Dreyfus & Co., as appears by the record given in evidence in this case and hereto annexed." Page 17 of Record.

The importance to plaintiffs of this charge will appear from the nature of this case. This is a suit by Feibelman & Volker against the Marshal for damages for seizing property as the property of E. Dreyfus & Co. under a writ of seizure issued in the case of D. Valentine & Co. vs. E. Dreyfus & Co. If neither Feibelman nor Feibelman & Volker were parties to

the suit of D. Valentine & Co. vs. E. Dreyfus & Co. then the act of the Marshal, in seizing their property under the writ against E. Dreyfus & Co., was a trespass on the part of the Marshal.

In this case the jury were liable to be misled in regard to this point from that part of the writ of seizure which directs the marshal to seize.

"All the property of the said defendants, real and personal, belonging to the said firm of E. Dreyfus & Co., or the individual members thereof, *and particularly the merchandize pretended to have been transferred to Moses Feibelman, of Delta, Louisiana.*."

The jury might infer from this, that Moses Feibelman was a party to that suit, unless they were instructed by the Court that he was not, and to inform the Court on that point the proceedings in the case of D. Valentine & Co. vs. E. Dreyfus & Co. were given in evidence, and the same are annexed to this bill of exception. Pages 19 to 25 of Record.

The legal effect of the seizure as against Feibelman would be different if he was a party to the suit of D. Valentine & Co. vs. E. Dreyfus & Co. from what it would be if he was not. In the latter case, the seizure of his property by the marshal would be a trespass, and in the former case it would not be. Trespass is the very foundation of plaintiffs' suit, so that if Feibelman was a party to said suit, this action could not be sustained, but if not, this action would be; hence the importance of the jury being instructed on this point.

It was a pure legal question, to be judged of by the record, and within the province of the Court to decide, and the refusal of the judge to instruct the jury that Feibelman was not a party to that suit, left the jury to infer that he was, and if so, plaintiffs had no cause of action in this case.

The statement of the case, it seems to us, carries with it the answer, that the judge erred in refusing this charge.

2d. This point is the natural deductcons from the first point. The Court being asked to charge the jury,

"That not being parties to that suit (D. Valentine & Co. vs. E. Dreyfus & Co.) the warrant issued in the cause, so far as it commanded the Marshal to take provisional possession of the property sold by E. Dreyfus & Co. to Moses Feibelman, transcended the powers conferred on the Court by the 40th section of the Bankrupt Act, and was in violation of that provision of the constitution of the United States which provides that no man shall be deprived of his property without due process of law." Page 17 of Record.

Section 40 of the Bankrupt Act authorizes the judge to issue an order to the Marshal, directing him "*to take possession provisionally of all the property and effects of the debtor and safely keep them until the further order of the Court.*" This does not authorize the judge to direct the Marshal to take possession of property in the hands of any other person. The writ in this case directed the Marshal "to seize the goods, wares and mer-

chandize pretended to have been *transferred and sold* by the defendant to Moses Feibelman, at Delta." This was not authorized by said section 40 of the Bankrupt Act, and is in direct conflict with Art. V of the amendments to the Constitution of the United States, which says that "no person shall be deprived of life, liberty or property without due process of law." As neither Feibelman nor Feibelman & Volker were parties to the proceeding in which said writ issued, it was not competent for the Court to order the seizure of property in the hands of persons not parties to the suit, as such order would be depriving such persons of their property without due process of law.

Judge Blatchford, *In Re* Harthill, 4 B. R. 131, held that an order similar to the one in this case was not authorized by section 40 of the Bankrupt Act, in so far as it directed the seizure of property which had been conveyed by the bankrupt to a third person. In the case of Knight vs. Chancy, 5 B. R. 303, the effect of the constitutional provision above referred to is clearly defined, and is in accordance to the views we have expressed. See page 313.

It seems to us that the charge asked for on this point is clearly legal in the abstract; its applicability to the case will appear hereafter.

4th. The charge here asked for was,

"That the clause in said writ which commands the Marshal to take into his possession provisionally, '*particularly the goods, wares and merchandize pretended to*

have been transferred and sold to Moses Feibelman, at Delta,' gives the Marshal no greater power or authority than he possessed without it, and did not authorize the Marshal to take possession of the property of plaintiffs, nor protect him in doing so; that the Marshal, in taking possession of any other property than that of E. Dreyfus & Co., under said writ, did it at his peril." Page 18 of Record.

The defendant rests his defence for taking the goods in plaintiffs' possession, on the authority vested in him by said writ; he avers: "That in obedience to the command of said process, the said defendant by his deputies did obey and comply with the command of said writ according to the tenor thereof; and did take into his possession and custody the goods, property and chattels described and referred to in said writ, and *no other* goods, property or chattels whatever, in which said act, said defendant had, from the nature of said writ, no choice or election whatsoever. Page 14 of Record.

This comprises the *real defence* in this case. It is that defendant did comply with the command of the writ, and took into his custody the goods described in said writ, and no others, as from the *nature* of the writ he had no *choice or discretion.*

This can refer to no other goods than those taken from the possession of plaintiffs, and has reference to *no other part* of the writ under which he acted than the *clause referred to* in the instruction asked for.

Let us now examine that clause, and see whether it gave any additional power to the writ whether it added anything to the responsibility of the Marshal or imposed on him any duty not imposed by the writ if it had been left out.

It will be seen hy the petition in the case of D. Valentine & Co. vs. E. Dreyfus & Co. annexed to this bill of exception, (page 19,) that E. Dreyfus & Co. had their establishment at Monroe, La., and that Moses Feibelman had his at Delta, La., in different parishes; consequently the goods referred to in this clause of the writ were not in the possession of E. Dreyfus & Co., but of Moses Feibelman.

Now, neither Moses Feibelman nor Feibelman & Volker were made parties to the suit of Valentine & Co. vs. Dreyfus & Co. in which this order was made, and the Court has no legal right to order goods in their possession as owner to be taken out of their possession; in that proceeding, such an order was in violation of the 40th section of the Bankrupt Act, and of the 5th amendment to the Constitution of the United States, providing that no person shall be deprived of his property without due process of law.

In this case the writ ordered the taking provisional possession of the bankrupt's property. The goods pretended to be sold to Feibelman were not partitularly described by the *price, kind or value*, nothing to show the *particular thing* to be seized, nothing that *divested* the Marshal of the same *discretion* that he is required

to exercise in the execution of all *mesne* processes, such as the one in this case, or final process on execution.

Rule XIII in bankruptcy lays down the guide for the Marshal in executing *mesne process* in such cases as the one under consideration—he is required to take possession of the property of the bankrupt, *Provided*, that if any of the effects so taken shall be claimed by any other person, the Marshal shall notify the creditor thereof, and may, within five days after such notice, deliver such property to the claimant, unless the creditor shall give bond to the Marshal, to be approved by him, to indemnify him for taking the property, in which event he is required to retain the property in possession.

And *provided further*, that in case the *creditor claims* that any property not in possession of the bankrupt belongs to him, and should be taken by the Marshal, the Marshal shall not be bound to take possession of the some unless indemnified in same manner as above.

In both the cases above provided for the Marshal is held liable as trespasser if the property detained does not belong to the bankrupt; the bond he is authorized to take is merely to refund him any damages he may have to pay, but is in no other respect a protection to him. 2 B. R. 175; 3 id. 86; 4 id. 131.

From this the Marshal's duties in such cases are plain.

In the case of Buck vs. Colbath, 3 Wal. on p. 342

and 343, this Court has defined the class of cases in which a Marshal is protected in the execution of orders of Court where a direct command to the officer is to take possession of particular property; such as in writs of replevin orders of sequestration in chancery, and the processes in admiralty courts by which the *Res* is brought before it for its action. See also 13 La. Ann. 227; 14 La. Ann. 142.

The order in the case now under consideration does not fall within this class of cases, but comes clearly within the other class of cases, as defined in this decision, to-wit: writs of attachment or other mesne process by which property is seized before judgment to answer to the judgment, which is the case under consideration, and the final process of execution, elegit or other writ by which an ordinary judgment is carried into effect.

Tested by the above rule, the order under consideration was not one in the nature of which specific property was to be seized, nor does it describe the thing to be seized, as is required in such cases, so that the Marshal would be left without any *discretion* in the matter.

Hence we contend the Court erred in refusing to give the charge to the jury requested.

5th. The charge asked for here is a corollary to the preceding charges asked for. It is

"That if the jury find from the evidence that plaintiffs were in possession of the property taken possession of by the Marshal under said writ at the time it

was so taken, and that they claimed the same as owners and were exercising dominion and control over said property at the time it was so taken, that the Marshal had no right or legal authority to take it out of their possession under said writ, and that his act in doing so was a trespass against said persons and their property.

"That their title and possession could not be legally disturbed by the Marshal under said writ, but only by due process of law instituted against them by some person claiming an adverse interest in it." Page 18 of R.

This question was fully discussed by Judge Clifford in a carefully prepared opinion, 5, B. R. 305.

In this case *Chaney* was appointed assignee of *Hunt*, an involuntary bankrupt; assignment was made to him of all the bankrupt's property; subsequently the assignee claimed a stock of merchandise in the possession of a certain firm, and the parties in possession refused to deliver the same, claiming to hold the goods in full property as purchased from the bankrupt.

The assignee then presented a petition to the District Court sitting in Bankruptcy against the said parties in possession, praying that they appear and show cause why the pretended sale and transfer should not be adjudged void for the reasons assigned. Page 306.

The possessors of the goods filed a motion to dismiss the assignee's petition upon the ground that the Dis-

trict Court in that form of proceeding had no jurisdiction to hear and determine the matter in controversy. The District Court overruled this motion and ordered the parties in possession of the goods to answer the petition of the assignee.

Whereupon, the parties in possession of the goods filed a petition in the Circuit Court to review the order of the District Court. Pages 307 and 308.

The Circuit Court held that such causes of action cannot be determined by the District Court in a *summary way without due process of law.* Such controversies must be determined by *suit* in *equity* or by *action at law.* Cases of the kind before the Court fall directly within the third clause of the section under consideration, "and where the property in controversy at the time the debtor was adjudged a bankrupt was in the *actual possession of a third person claiming absolute title and dominion of the same, the question of ownership, if the same is claimed by the assignee of the bankrupt, must be determined by a suit in equity or by an action at law.*" Page 311.

The learned Judge, in commenting on the authority contained in the 25th section of the bankrupt act, to cause to be sold the property of the debtor which has come into the possession of the assignee or *which is claimed by him* where it appears to the satisfaction of the Court that the title to the same is in dispute, the Judge holds that this only applies to property in the possession of the debtor at the time he is adjudged a

bankrupt and was duly transferred to the assignee and that it remained in his possession at the time the sale was ordered. "The estate in this case was never transferred to the assignee and was not in his possession at the time the order of sale was passed. On the contrary, it was in the actual possession of the respondent firm claiming absolute title to and dominion over the same as their own property." Page 312.

The Judge says: Adopt the theory contended for by the assignee, and the constitution, which was ordained to establish justice, becomes a mockery, as any man may be deprived of his property without due process of law—page 313; and on page 315 the learned Judge shows the true meaning of the law, and that it harmonizes with the rights of possessors as owners and the constitution.

The Judge concludes his decision by saying:

"Viewed in any light, the Court is of the opinion that the District Court does not possess the power under that provision to order in a summary way the sale of an estate *real* or *personal*, although the same is claimed by the assignee even though the title is in dispute, if it also appears that the *estate in question is in the actual possession of a third person holding the same as owner and claiming absolute title to and dominion over the same as his property, whether derived from the debtor before he was adjudged bankrupt or from some other former owner.*" Page 317.

We have thus called attention to this decision, as it

seems to us to settle the very question on which we asked the instruction.

This decision clearly shows that *property* in the *possession* of any other person than the bankrupt, held by the possessor as *owner* and exercising *dominion* over it, cannot be taken possession of by the assignee, much less the petitioning creditor, through the Marshal, as was attempted in the case before the Court, except by regular suit at law or in equity, as the case may be.

The same principle is announced by Judge Blatchford in the case—

In Re Harthiel, 4 B. R. 131.

In Re Müller & Brentano, 3 B. R. 86.

In Re Isaac Marks, 2 B. R. 175. This case has some features like the one under consideration.

6th. The charge asked under this point is,

"That if the jury find from the evidence that at the time the Marshal took possession of the property under said writ the plaintiffs were in actual possession of said property and were then exercising dominion and control over it as owners, that in this suit, which is for damages against the Marshal for trespass in taking such property, that title in E. Dreyfus & Co. to said property cannot be legally set up by the Marshal, whether plaintiffs' title is fraudulent or not. That their title to said property cannot be attacked and they be put on proof of ownership of said property in their *possession as owners* under a writ commanding the seizure of the property of E. Dreyfus & Co.; that they cannot be

disturbed in their possession of property held by them as owners unless by a suit against them in a regular judicial proceeding in which they can, in a court, defend their title." Page 18 of R.

The laws of Louisiana (R. C. C. 3453) provide that "Rights which are common to all possessors in *good* or *bad* faith are—

"1. That they are considered *provisionally as owners* of the thing which they possess so long as it is not reclaimed by the true owner, or person entitled to reclaim it, and even after such reclamation, until the *right* of the person making it is *established*."

Articles R. C. C. 3414, 3415 define possessors in good and bad faith. R. C. C. art. 3415 defines the possessor in bad faith to be one "who possesses as master, but who assumes this quality when he well knows he has no title to the thing, or that his title is vicious and defective."

From these textual provisions of the laws of Louisiana, in the language of the bill of exception, if "plaintiffs were in actual possession of said property, and were then exercising dominion and control over it as owners" at the time the Marshal seized and took it out of their possession, they were "considered provisionally as owners" of it, whether they possessed in good or bad faith. This ownership continues until the *person* entitled to its *reclamation establishes* his rights to it by legal process.

Under these provisions of law, on the hypothesis that

this property formerly belonged to E. Dreyfus & Co., and the sale of it to plaintiffs was fraudulent as to the creditors of E. Dreyfus & Co., can such fraudulent sale, under the laws and jurisprudence of Louisiana, be attacked by the seizure of the Marshal under the writ and in the manner it was done in this case?

The laws and jurisprudence on the subject of avoiding sales made in fraud of creditors in Louisiana is derived from the civil law, and is specifically defined in the Revised Civil Code of Louisiana, §§1970 to 1994. The decisions of the Supreme Court of Louisiana have been uniform from the organization of that tribunal to its latest decision on that point, that a sale in fraud of creditors cannot be attacked by a seizure by the sheriff, under an execution against the debtor, of the property in the hands of a third possessor, as was attempted in this case.

We refer the Court to the following decisions on that point:

St. Avid vs. Wumprender, 9 M. 648.
Richards vs. Nolan, 3 N. S. 336, on p. 338.
Peet vs. Morgan, 6 N. S. 137.
Barbarin vs. Saucier, 5 N. S. 361.
Crocker vs. DePassan, 5 La. 38.
Burnet vs. Duverges, 5 La. 126.
Weeks vs. Flower, 9 La. 384.
Keller vs. Blanchard, 19 A. 53.
Van Austern vs. Simons, 15 A. 302.
Collins vs. Shaffer, 20 A. 42.

Bailey vs. Chase, 18 A. 732.
Schneider vs. Dreyfus, 21 A. 271.
Austin vs. DeRocha, 23 A. 44.
Anderson vs. Carroll, 23 A. 175.
Doherty vs. Leake, 24 A. 224.
Chapin vs. Blanc, 25 A. 35.
Gaidry vs. Lyons, 29 A. 4, on p. 7.
Bass vs. Messick, 30 A. 373.
McAdam vs. Soria, 31 A. 862. This is very direct in point.

The same rule applies to personal as to real property, as is directly held in the case of Schneider vs. Dreyfus, 21 A. 271. In several of the cases cited above, personal property was the subject of litigation. 23 A. 44. See case of McAdam vs. Soria, 31 A. 862, directly on the point, and the last decision on this point.

In this connection, we wish to call the attention of the Court to the difference between a *fraudulent* and a *simulated* transfer of property—a distinction that does not appear to obtain under the common law. The *first* is a *real* transaction, although fraudulent as to creditors, and the second is a *mere shadow*, or, as described in Keller vs. Blanchard, 19 A. on page 54, "A simulated sale of a thing results when parties pass a formal act of sale of the thing, for which no price is given nor intended to be given."

When a *simulated* sale is interposed to the execution

of a *fi. fa.* or other writ, it may be disregarded, but if a *fraudulent* sale is interposed, then such writs cannot reach the property, but the party in interest is remitted to the *revocatory action* of the civil law."

The doctrine on this point, with references to the decisions, is so fully and clearly stated in 2 Hennen's La. Digest, page 1031, No. 1, that we refer the Court to it for a clear analysis on this point.

This is the distinction aimed at in *asking this charge to the jury.* If the sale from E. Dreyfus & Co. to plaintiffs was a *fraudulent*, not a *simulated* sale, then the Marshal could not legally seize the plaintiffs' property; and this is what we asked the Court to charge the jury.

The Marshal could not, in avoidance of damages for his trespass, set up any defence that the creditors could not have set up, had they been made parties to this suit.

Suit may be instituted against the sheriff for trespass for wrongful seizure without making 'plaintiff' in the writ a party. Peet vs. Morgan, 6 N. S. 137; Barbarin vs. Saucier, 5 N. S. 361; Crocker vs. DePassan, 5 La. 38.

A party damaged by the illegal acts of the sheriff or Marshal, for seizing his property under a writ against another person, may sue for damages without waiting to test the title to the property seized.

Sheriff vs. Morgan, 9 M. La., on p. 624.
Crocker vs. DePassan, 5 La. 38.
Edwards vs. Turner, 6 Ro. on pp. 384–5.
In Re Marks, 2 B. R. 175.

We have not overlooked the decision in the case of Hozey vs. Buchannan, 16 Peters, 217, where the point raised by us in this case was decided adversely to the position we take; but it is evident from the decision, that had the law of Louisiana been shown in that case as we have attempted to show it in this case, that the the ruling of the lower court in that case, which was in favor of the position we take in this case, would have been sustained.

Judge McLean, in delivering the opinion of the Court in that case, says, page 218: "The allegation of fraud in the answer (and there is no such an allegation in the case before the Court) in the sale from Wilkinson to the plaintiff below was a most material allegation. If established, it constituted a good defence to the action. On what ground this was stricken from the answer by the Court is not perceived and cannot well be imagined. *No authority has been shown in the Louisiana law for such a proceeding, and it is believed that none exists.*"

The Louisiana mode of proceeding was as well established in favor of such a proceeding then as now, and it is clear that the counsel who argued that case did not refer the Court to the Louisiana jurisprudence

on this point, or else the decision of the lower court in that case would have been sustained; under the authority of §914, U. S. R. S. the practice in State courts is to be the rule in the United States Courts, and such being the case, we contend the charge asked for should have been given.

The remaining points in the bill of exception as well as the other bill of exception need not be discussed in this case, inasmuch as they refer to the rights of plaintiffs if the jury should find in their favor, but as the jury in this case found against them generally, the questions raised by them are not material for the decision of any point before the Court.

Plaintiff in error assigns as errors in the rulings of the Court the following:

First. That this case is not one which, under the law, is removable from the State Court, in which it was instituted, to the Circuit Court of the United States.

Second. The Court erred in refusing to charge the jury as requested by plaintiffs on the several points stated in the bill of exception as Nos. 1, 2, 4, 5, 6, 8 and 10. See pages 17 and 18 of the Record.

Respectfully submitted,

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For Plaintiffs in Error.